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Committee on Legal Affairs

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PE 353.499v01-00

AMENDMENTS 18-83

Draft opinion

(PE 353.292v01-00)

Diana Wallis

Proposal for a European Parliament and Council directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing

Proposal for a directive (COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Klaus-Heiner Lehne

Amendment 18

Title

Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, **including** terrorist financing

Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering **and** terrorist financing

Or. de

Justification

Even if the scope of the Directive quite properly includes terrorist financing, the latter should be viewed as distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering, but is a criminal offence in its own right.

Amendment by Arlene McCarthy

Amendment 19

Recital 4

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(4) In order to respond to these concerns, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering was adopted. It required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.

(4) In order to respond to these concerns, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering was adopted. It required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities. ***That Directive, as amended, has only recently been implemented in some Member States and still remains unimplemented in one Member State. In these circumstances and in compliance with the commitment of all the Community institutions to undertake a legislative impact assessment, it would be appropriate to conduct a detailed assessment of whether Directive 91/308/EEC has achieved its aim of reflecting best international practice in this area and of setting a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime. Such assessment should also ascertain the effectiveness of reporting and other enforcement mechanisms contained in the Directive so as to inform current and future legislation, in particular as regards implementation procedures.***

Or. en

Amendment by Klaus-Heiner Lehne

Amendment 20
Recital 8

(8) Furthermore, the range of criminal activity ***underlying the definition of money***

(8) Furthermore, the range of criminal activity ***covered by the scope of the***

laundering should be expanded in order to include the fight against terrorism and terrorist financing. Indeed, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the definition of money laundering should be amended to cover not only the manipulation of money derived from crime but also the collection of legitimate money or property for terrorist purposes. In addition, terrorism should form part of the list of serious crimes.

Directive should be expanded in order to include the fight against terrorism and terrorist financing. Indeed, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the definition of money laundering should be amended to cover not only the manipulation of money derived from crime but also the collection of legitimate money or property for terrorist purposes. In addition, terrorism should form part of the list of serious crimes.

Or. de

Justification

Even if the scope of the Directive quite properly includes terrorist financing, the latter should be viewed as distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering, but is a criminal offence in its own right.

Amendment by Piia-Noora Kauppi

Amendment 21

Recital 8a

(8a) The general obligation to adopt effective, proportionate and dissuasive sanctions, combined with the criminalisation obligation of Article 1, means that **criminal** sanctions should apply to natural persons who infringe obligations on customer identification, record-keeping and reporting of suspicious transactions for the purpose of money laundering, since such persons have to be regarded as participating in the money laundering activity.

(8a) The general obligation to adopt effective, proportionate and dissuasive sanctions, combined with the criminalisation obligation of Article 1, means that sanctions should apply to natural persons who infringe obligations on customer identification, record-keeping and reporting of suspicious transactions for the purpose of money laundering, since such persons have to be regarded as participating in the money laundering activity.

Or. en

Justification

It would be more appropriate to rely on FATF Recommendation 17, which proposes that in cases of an infringement of AML obligations countries should provide for proportionate and dissuasive sanctions, whether criminal, civil or administrative. The ultimate choice depends on the legal systems of the respective Member States, based on the principle of subsidiarity.

Amendment by Klaus-Heiner Lehne

Amendment 22

Recital 10

(10) The mere prohibition of money laundering is not sufficient and it is necessary to foresee criminal law sanctions in order to ensure that money laundering, **including** terrorist financing, is effectively prevented. Therefore, money laundering should be made a criminal offence under Community legislation.

(10) The mere prohibition of money laundering is not sufficient and it is necessary to foresee criminal law sanctions in order to ensure that money laundering **and** terrorist financing, is effectively prevented. Therefore, money laundering should be made a criminal offence under Community legislation.

Or. de

Justification

The financing of terrorist acts is not a special case of money laundering, but a criminal offence in its own right.

Even if the scope of the Directive quite properly includes terrorist financing, the latter should be viewed as distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering.

Amendment by Luis de Grandes Pascual

Amendment 23

Recital 12

(12) Directive 91/308/EEC, as amended, brought notaries and independent legal professionals within the scope of the Community anti-money laundering regime; this coverage should be maintained unchanged in the new Directive; these legal professionals, as defined by the Member States, are subject to the provisions of the Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity.

(12) Directive 91/308/EEC, as amended, brought notaries and independent legal professionals within the scope of the Community anti-money laundering regime; this coverage should be maintained unchanged in the new Directive; these legal professionals, as defined by the Member States, are subject to the provisions of the Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity. ***Given that the Directive affects fundamental rights, and especially the right of access to justice and the right to a fair hearing, the Commission needs to carry out a review in accordance with the schedule laid down in***

the Directive.

Or. es

Justification

Article 2 of Directive 91/308/EEC, as amended, stipulated that ‘Within three years of the entry into force of this Directive, the Commission shall carry out a particular examination, in the context of the report provided for in Article 17 of Directive 91/308/EEC, of ... the specific treatment of lawyers and other independent legal professionals, ...’.

Amendment by Arlene McCarthy

Amendment 24

Recital 12

(12) Directive 91/308/EEC, as amended, brought notaries and independent legal professionals within the scope of the Community anti-money laundering regime; this coverage should be maintained unchanged in the new Directive; these legal professionals, as defined by the Member States, are subject to the provisions of the Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity.

(12) Directive 91/308/EEC, as amended, brought notaries and independent legal professionals within the scope of the Community anti-money laundering regime; this coverage should be maintained unchanged in the new Directive; these legal professionals, as defined by the Member States, are subject to the provisions of the Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity. ***The review provided for in Article 2 of Directive 91/308/EEC, as amended, and relating to these professions should be put in train and carried out without further delay. Where there is evidence of problems with implementation and application for certain professions an immediate review should be undertaken.***

Or. en

Amendment by Luis de Grandes Pascual

Amendment 25

Recital 13

(13) Where independent members of professions providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate under the Directive to put these legal professionals in respect of these activities under an obligation to report suspicions of money laundering. There should be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering activities, the legal advice is provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes

(13) Where independent members of professions providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate under the Directive to put these legal professionals in respect of these activities under an obligation to report suspicions of money laundering. There should be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering activities, the legal advice is provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes ***and fails to refrain from giving advice as the client's lawyer.***

Or. es

Justification

A lawyer and a client enter into a relationship at the moment when they have each consented to do so. Before reaching that stage, the lawyer considers the potential client's request for advice, which he may in the end refuse to give when it is intended for money laundering purposes. In that event, since he has not accepted the client's business, there is no reason why he should be under any form of obligation to notify the authorities concerned.

Amendment by Piia-Noora Kauppi

Amendment 26
Recital 19 a (new)

(19a) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European

Parliament and the Council; the need to ensure that competent authorities will be able to ensure compliance with the rules consistently; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to respect the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive basic approach; the need to ensure coherence with other EU legislation in this area; and the need to protect the European Union, its Member States and their citizens from the consequences of money laundering and terrorist financing.

Or. en

Justification

As the Directive would introduce the adoption of implementing measures, it is necessary to avoid any over-regulation in this field. There should be a clear reference, in a recital at least, to proper consultation of interested parties for the adoption of implementing measures by the Commission. It should also be stipulated that a balance of costs and benefits should be ensured.

Amendment by Theresa Villiers

Amendment 27
Recital 29 a (new)

(29a) For the purpose of this Directive ‘Foundation, legal arrangements and trusts’ shall not include:

(i) a foundation, legal arrangement or trust under which corporate debt is issued and recognised in the balance sheet of a company listed on a recognised stock exchange;

(ii) a foundation, legal arrangement or trust arising on the death of any person either testate or intestate;

(iii) a foundation, legal arrangement or

trust required by the law of any Member State for the joint ownership of property.

Or. en

Justification

Most corporate debt issues managed by EU-based institutions are held on trust. They have therefore been included in the Directive accidentally because of its extension to trustees. However, this was not the intention of the drafters, as any money-laundering risk in this area is already managed by financial services regulation, which should not be duplicated. Without this amendment, the Directive could be highly disruptive to bond markets in the European Union.

The Directive extends money-laundering requirements to trusts. Trusts frequently arise automatically on death in the UK and Ireland. For example, on a death where no will is left, trusts are imposed by statute as a matter of English law. Succession arrangements in other Member States are not covered by the proposed new directive and this clarification ensures that the UK and Ireland are treated in the same way as other Member States.

The Directive extends money-laundering requirements to trusts. Trusts are a mandatory feature of the joint ownership of land in England and Ireland. These joint ownership trusts should be excluded from the Directive. The Directive does not cover joint ownership situations in the rest of Europe. This clarification brings the UK and Ireland into line with other Member States. A purchase or sale of land will already be subject to existing anti-money-laundering controls.

Amendment by Klaus-Heiner Lehne

Amendment 28
Article 1, paragraph 1

1. Member States shall ensure that money laundering ***is a criminal offence.***

1. Member States shall ensure that money laundering ***and terrorist financing are criminal offences.***

Or. de

Justification

Even if the scope of the Directive quite properly includes terrorist financing, the latter should be viewed as distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering, but is a criminal offence in its own right.

Amendment by Klaus-Heiner Lehne

Amendment 29
Article 1, paragraph 2, subparagraph 1(d)

(d) the provision or collection of lawful property, by any means, with the intention that it should be used or in the knowledge that it is to be used, in full or in part, for terrorism; ***deleted***

Or. de

Justification

Terrorist financing must be removed from the definition of money laundering and defined separately.

Even if the scope of the Directive quite properly includes terrorist financing, the definition of the latter should be distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering, but is a criminal offence in its own right.

Amendment by Klaus-Heiner Lehne

Amendment 30

Article 1, paragraph 2 a (new)

2a. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as terrorist financing:

(a) the provision or collection of lawful property, by any means, with the intention that it should be used or in the knowledge that it is to be used, in full or in part, for terrorism;

(b) participation in, conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned above.

Or. de

Justification

Even if the scope of the Directive quite properly includes terrorist financing, the definition of the latter should be distinct from money laundering. Terrorist financing is in practice not an instrument of money laundering, but is a criminal offence in its own right.

The funding of terrorist activities must therefore be defined in a separate paragraph in Article 1. Definitions from the Commission proposal (see Article 1(2), paragraph 1, introduction and subparagraphs (d) and (e) have been incorporated; letter e has been shortened as appropriate.

Amendment by Theresa Villiers

Amendment 31
Article 1, paragraph 2 a (new)

2a. Money laundering shall include the acquisition, possession or use of property derived from criminal activity, in accordance with point (c) in paragraph 2 above, including in circumstances where the criminal activity was carried out by the person concerned without further transactions.

Or. en

Justification

This proposed amendment would clarify the definition of 'money laundering' contained in Article 1 of the proposed Directive, which has been carried forward from the Second Directive and includes the acquisition, possession or use of property derived from criminal activity. Some Member States have assumed that this includes the simple possession of the proceeds of crime by the perpetrator of the crime, with no actual laundering of the proceeds having been necessary, while others have assumed that it relates only to the possession of the proceeds of another person's crime. The proposed amendment will remove this lack of clarity.

Amendment by Luis de Grandes Pascual

Amendment 32
Article 2, paragraph 1, point 3 (b)

(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:

(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of **financial** transactions for their client concerning the:

Or. es

Justification

The intention is to make it clear that lawyers and other independent legal professionals should not be subject to the directive unless they act as financial intermediaries.

Amendment by Piia-Noora Kauppi

Amendment 33

Article 3, point 8, point (a)

(a) the natural person who ***ultimately, directly or indirectly, owns or controls 10 %*** or more of the shares or ***of the*** voting rights of a ***legal person or who otherwise exercises a comparable influence over the management of a legal person, other than a company listed on an official stock exchange that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;***

(a) the natural person who ***holds*** directly ***25%*** or more of the shares ***issued to the bearer*** or voting rights of a ***company that has not been admitted for dealings on an official stock exchange and whose identity and shareholdings have been published officially;***

Or. en

Justification

The threshold of 10% is neither adequate nor practicable. This threshold should be increased to 25%. Furthermore, institutions and persons covered by this Directive do not have access to public registers to obtain the identity and to verify the identity of shareholders in non-listed companies and other legal arrangements. The identification and verification requirements regarding the beneficial owner should therefore be subject to access to publicly available sources of information (e.g. register or gazette).

Amendment by Piia-Noora Kauppi

Amendment 34

Article 3, point 8, point (b)

(b) the natural person who is ***ultimate beneficiary, directly or indirectly, of 10 % or more*** of the property of a foundation, a trust ***or similar*** legal arrangement ***or who exercises influence over a comparable quantity of the property of a foundation, a trust or a similar legal arrangement, other than a company listed on an official stock exchange that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;***

(b) the natural person who is ***the direct beneficiary of at least 25%*** of the property of a foundation ***or*** a trust ***and whose identity has been published officially when entering into the*** legal arrangement;

Or. en

Justification

The threshold of 10% is neither adequate nor practicable. This threshold should be increased to 25%. Furthermore, institutions and persons covered by this Directive do not have access to public registers to obtain the identity and to verify the identity of shareholders in non-listed companies and other legal arrangements. Therefore, the identification and verification requirements regarding the beneficial owner should be subject to access to publicly available sources of information (e.g. register or gazette).

Amendment by Piia-Noora Kauppi

Amendment 35 Article 3, point 10

(10) ‘politically exposed persons’ means natural persons who are or have been entrusted with prominent public functions and whose substantial or complex financial or business transactions may represent an enhanced money laundering risk **and** close family members or close associates of such persons;

(10) ‘politically exposed persons’ means natural persons:

(a) who are not citizens of the European Union and who are or have been entrusted with prominent public functions **at national level** and whose substantial or complex financial or business transactions may represent an enhanced money laundering risk **and/or a risk to their reputation, or**

(b) who are identified as close family members or close associates of such persons;

Or. en

Justification

The definition of politically exposed persons (PEPs) is too vague and runs counter to the risk-based approach. The European Union should be considered as a single jurisdiction and PEPs from EU Member States should be excluded from this definition, especially since credit institutions already apply appropriate due diligence procedures. The PEP definition should be limited to non-EU citizens who have prominent public functions at national level (i.e. high-ranking PEPs) and whose substantial or complex transactions may represent enhanced money laundering and reputational risks. It should also cover persons who are identified as close family members and associates.

Amendment by Giuseppe Gargani

Amendment 36
Article 3, point 10

(10) ‘politically exposed persons’ means natural persons who are or have been entrusted with prominent public functions and whose substantial or complex financial or business transactions may represent **an** enhanced *money laundering* risk and close family members or close associates of such persons;

(10) ‘politically exposed persons’ means natural persons who are or have been entrusted with prominent public functions and whose substantial or complex financial or business transactions may represent **situations of** enhanced **reputational and money-laundering** risk and **those identified as** close family members or close associates of such persons;

Or. it

Amendment by Giuseppe Gargani

Amendment 37
Article 3, point 11

(11) ‘*Business relationship*’ means a business, professional or commercial relationship which is expected, at the time when the contact is established, to have an element of duration;

(11) ‘*business relationship*’ means a business, professional or commercial relationship **which is closely connected with the corresponding activity carried out by the institution or person subject to the Directive and** which is expected, at the time when the contact is established, to have an element of duration;

Or. it

Justification

The current definition is far from precise; it should, however, include a more targeted reference to the fact that the relevant 'business relationships' are only those specifically connected with the typical activities carried out by the institutions and persons which have to fulfil the obligations laid down by the Directive.

Amendment by Theresa Villiers

Amendment 38
Article 3, point 11

(11) ‘*Business relationship*’ means a business, professional or commercial

(11) ‘*business relationship*’ means a business, professional or commercial

relationship which is expected, at the time when the contact is established, to have an element of duration;

relationship which is ***maintained in close conjunction with corresponding activities of the institutions and persons subject to this Directive and which is*** expected, at the time when the contact is established, to have an element of duration;

Or. en

Justification

The term 'business relationship' defined in Article 3(11) is not precise and should be clarified to ensure that it only covers business relationships which are specifically related to or carried out in close conjunction with the mainstream activities of the financial institution (for example securities trading and safe custody).

Amendment by Piia-Noora Kauppi

Amendment 39
Article 3, point 11

(11) '*Business relationship*' means a business, professional or commercial relationship which is expected, at the time when the contact is established, to have an element of duration;

(11) '*business relationship*' means a business, professional or commercial relationship which is ***maintained in close conjunction with corresponding activities of the institutions and persons subject to this Directive and which is*** expected, at the time when the contact is established, to have an element of duration;

Or. en

Justification

The term 'business relationship' is not precise and should only cover such business relationships which, in the case of banking, are specifically related to or carried out in close conjunction with the mainstream activities of the financial institution (for example securities trading and safe custody).

Amendment by Luis de Grandes Pascual

Amendment 40
Article 3, point 12 a (new)

(12a) 'Independent legal professional' means a member of a legally recognised profession which provides legal advice, in the same way as lawyers, and is supervised by an independent self-regulating body

with disciplinary powers.

Or. es

Justification

Given that independent legal professionals are mentioned in recital 13, they should likewise be mentioned in the appropriate terms in the body of the directive.

Amendment by Theresa Villiers

Amendment 41
Article 3, point 12 a (new)

(12a) Nothing in this Directive shall require the identification or verification of beneficial ownership of property ('the property') comprising

(i) debt issued by a corporation or by a public authority and listed on a regulated exchange, or

(ii) equities listed on a regulated exchange; by a person holding the property in a pooled account on behalf of another financial institution acting as a depository institution.

Or. en

Justification

Most corporate debt issues managed by EU-based institutions are held on trust. They have therefore been included in the Directive accidentally because of its extension to trustees. However, this was not the intention of the drafters as any money-laundering risk in this area is already managed by the financial services regulation, which should not be duplicated. Without this amendment, the Directive could be highly disruptive to bond markets in the European Union.

Amendment by Theresa Villiers

Amendment 42
Article 3, point 12 b (new)

(12b) Nothing in this Directive shall require the identification or verification of beneficial ownership of property ('the property') comprising debt issued by a corporation or by a public authority and listed on a regulated exchange, by a person appointed by the issuer of the debt to act as trustee of the issue. For the purposes of this Directive, where such a person is appointed as a trustee, the customer in relation to the provision of the relevant trust services is the issuer.

Or. en

Justification

Most corporate debt issues managed by EU-based institutions are held on trust. They have therefore been included in the Directive accidentally because of its extension to trustees. However, this was not the intention of the drafters as any money-laundering risk in this area is already managed by the financial services regulation, which should not be duplicated. Without this amendment, the Directive could be highly disruptive to bond markets in the European Union.

Amendment by Theresa Villiers

Amendment 43

Article 4

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering. ***deleted***

Or. en

Justification

The proposed new Directive would go far beyond those of the previous money-laundering directives. There should therefore be no need for Member States to impose further provisions.

Amendment by Piia-Noora Kauppi

Amendment 44

Article 4

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money ***deleted***

laundering.

Or. en

Justification

The provision of Article 4 is identical with a provision previously contained in Article 15 of Directive 91/308/EEC. Nevertheless, the provisions of the proposed new Directive would go far beyond those of the previous money-laundering directives, thus questioning the need for stricter provisions adopted by Member States. Moreover, this provision is incompatible with the essential principle of uniform Europe-wide money-laundering standards. In the context of the EU internal market, uniform and common AML rules are the only adequate solution to combat money laundering effectively. It is also the only solution to avoid distortions of competition between economic operators owing to potential differences in AML legislation in Member States. Therefore, based on the overall approach of the current proposal for a Directive, the remaining provision under Article 4 appears obsolete.

Amendment by Giuseppe Gargani

Amendment 45
Article 4

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering. ***deleted***

Or. it

Justification

The current provision gives the Member States the option of adopting stricter provisions than those in the Directive (i.e. minimum harmonisation). It is necessary, however, not least with a view to creating an effective EU internal market, to adopt common, uniform rules (i.e. maximum harmonisation); this will also avoid any potential distortions of competition.

Amendment by Theresa Villiers

Amendment 46
Article 6, point (d)

(d) when there are doubts about the veracity or adequacy of ***previously obtained*** customer identification data.

(d) when there are doubts about the veracity or adequacy of ***existing*** customer identification data ***obtained after the entry into force of this Directive.***

Justification

As currently drafted, this provision would require due diligence over customer identification data existing before the entry into force of the Directive. This would mean that checks would have to be carried out on all existing data which would be a hugely onerous task and would cause great inconvenience to consumers. This is surely not intended by the drafters of the proposal.

Amendment by Giuseppe Gargani

Amendment 47

Article 7, paragraph 1, point (b)

(b) identifying, where applicable, the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

(b) identifying, where applicable, ***on the basis of independent, reliable and publicly accessible sources of information, data and documents***, the beneficial owner and taking reasonable measures, ***based on differing risk situations***, to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

Or. it

Justification

The scope of the obligations proposed with regard to identifying and verifying the identity of beneficial owners needs to be further clarified by spelling out the fact that the substance of Article 7(1)(b) encompasses those obligations within the limits provided for, and made possible by, individual national rules. In many cases, in fact - where it is impossible to find the requisite information in public lists or registers, for example - banks and financial intermediaries would find it impossible to verify the identity of those owners and the actual ownership structure of the legal person.

Amendment by Giuseppe Gargani

Amendment 48

Article 7, paragraph 1, point (b)

(b) identifying, where applicable, the beneficial owner and taking reasonable measures to verify the identity of the

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beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer; ***the due diligence procedure shall be deemed to have been carried out when the power to represent the client has been ascertained, this taking the form of formal representation, duly conferred, or of legal representation of natural persons, companies, institutions and organisations of all kinds;***

Or. it

Justification

The due diligence provisions in Article 7 are not acceptable, since the 'know your customer' principle is directed towards inappropriate, active investigatory work to be carried out by the professional operator, who is without adequate powers and without the relevant mental habits.

This also constitutes serious interference with the freedom of individuals (in contrast with Article 8 of the European Convention on Human Rights) and of legal arrangements which form part of legal tradition, history and culture, as ways of ensuring the legitimate protection, based on a private-enterprise approach, of personal privacy in the management of personal affairs and assets.

*Furthermore, the protection of individual privacy forms part of the *acquis communautaire*, as well as being covered by international agreements on police matters and judicial assistance.*

Accordingly, the requirement should be simply to supply information indicating a point of access, and not to reconstruct the whole history, which is a matter for the competent authorities.

Amendment by Theresa Villiers

Amendment 49

Article 7, paragraph 1, point (b)

(b) identifying, where ***applicable***, the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal

(b) identifying, where ***practicable***, the beneficial owner and taking ***risk-based*** reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal

arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

arrangements, taking **risk-based** reasonable measures to understand the ownership and control structure of the customer; **where the customer is a properly constituted company registered in a jurisdiction which is regarded as low risk, and in the absence of any other significant risk factors, reasonable evidence of the company's registration from an independent source shall constitute reasonable measures;**

Or. en

Justification

This amendment has three aims: (i) Some trusts are set up to benefit a class of beneficiaries who may not all be identifiable at the start of the arrangement, e.g. the descendants of an individual or the employees of a company. It is not possible to carry out money-laundering checks on people who might not yet have been identified (or even born!). (ii) Identity checks should also be risk-based, with stricter checks being justified in cases of higher risk. (iii) The extent to which corporate entities need verification beyond that which is publicly available from public records should be restricted to companies registered in or with material links to higher-risk jurisdictions which do not meet acceptable standards.

Amendment by Piia-Noora Kauppi

Amendment 50

Article 7, paragraph 1, point (b)

(b) identifying, where applicable, the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

(b) identifying, where applicable, **on the basis of publicly accessible and reliable independent source documents, data or information** the beneficial owner and taking **risk-based and** reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking **risk-based and** reasonable measures to understand the ownership and control structure of the customer;

Or. en

Justification

Institutions and persons covered by this Directive do not have access to public registers to obtain the identity and to verify the identity of shareholders in non-listed companies and other legal arrangements. Therefore, the identification and verification requirements regarding the beneficial owner should be subject to access to publicly available sources of information (e.g. register or gazette). In addition, formal verification of the identity of the natural persons who are the ultimate beneficial owners is only necessary where there is a significantly higher risk of the legal entity, foundation, trust or similar legal arrangements being misused for money-laundering purposes.

Amendment by Theresa Villiers

Amendment 51

Article 7, paragraph 1, point (d)

(d) conducting ongoing due diligence on 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. ***deleted***

Or. en

Justification

This provision fails to provide clear guidance as to what is expected from institutions or persons covered by this Directive. Article 6(b) and (c) already require scrutiny of occasional transactions amounting to EUR 15 000 or more and in cases where there is a suspicion of money laundering. It is unclear what additional level of analysis would be required to be able to comply with this provision.

Amendment by Theresa Villiers

Amendment 52

Article 8, paragraphs 1, 1 a (new) and 1 b (new)

1. Member States shall require that the *institutions and persons covered by this Directive apply customer due diligence before or during the course of establishing a business relationship or executing a transaction for occasional customers.*

1. Member States shall require that the *verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the execution of a transaction.*

1a. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary to avoid interrupting the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures should be completed as soon as practicable after the initial contact.

1b. By way of derogation from paragraphs 1 and 1a, Member States may, in relation to

(i) life insurance business, allow the verification of the identity of the beneficiary under the policy to take place after having established the business relationship. In all such cases verification should take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy,

(ii) trusts created within a Member State,

(a) provided that the trustees and settlor are resident in a Member State at the date of the creation of a trust and

(b) provided that the trustees remain so resident,

allow the verification of the identity of the beneficiaries of the trust to take place after having established the business relationship. In all such cases verification by the trustees need only take place at or before the time of distribution to that beneficiary and Member States may permit the need for third party identification and verification to be dispensed with on a risk-

based approach.

Or. en

Justification

This amendment takes up the useful clarification on life assurance contained in the Council text and gives trusts the same treatment. It means money-laundering checks only have to be carried out when money is actually paid out of the trust to a beneficiary. Amending the text in this way concentrates responsibility on the trustee at the appropriate time and removes third-party checks only for EU-resident trusts. Furthermore, some future beneficiaries may not be made aware that they are to benefit (the trust may set a certain date or contingent event before the beneficiary benefits). It would undermine the intention of the settlor to verify the identity of the beneficiaries at the outset of the business relationship as this would inform them of the existence of a trust.

Amendment by Giuseppe Gargani

Amendment 53
Article 8, paragraph 2

2. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 7(1), it may not open the account, establish a business relationship or perform the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer.

2. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 7(1), it may not open the account, establish a business relationship or perform the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer. ***Those professions the legal status of which makes the provision of the service obligatory, up to the limits of manifest illegality, shall be exempt from the requirement to refrain therefrom.***

Or. it

Justification

The provision (Article 8) that, where a professional operator is unable to carry out the due diligence provided for in Article 7, he must refrain from providing the service, is unacceptable.

Taking into account the Community principle of the suitability and proportionality of measures in relation to objectives, it is sufficient to require simply reporting to the financial intelligence unit (FIU), as provided for in Article 8(2).

Amendment by Piia-Noora Kauppi

Amendment 54
Article 8, paragraph 2

2. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 7(1), it may not open the account, establish a business relationship or perform the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer.

2. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 7(1), it may ***only open an account provided there are adequate safeguards in place to ensure that financial transactions are not performed on behalf of the customer until final clarification on the basis of full compliance with the aforementioned provisions is obtained; in the event of continued non-compliance with the aforementioned provisions the institution or person concerned shall not establish a business relationship or perform any transaction, or shall terminate any existing business relationship***, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer.

Or. en

Justification

Credit institutions should not be forced to terminate a business relationship or prohibited from entering into a business relationship if they cannot fulfil all KYC procedures on a temporary basis - provided that they are able to comply with those requirements after a reasonable period of time. Only in cases where credit institutions are really unable to comply with KYC requirements, the prohibition shall apply. This situation is especially problematic if the EU legislator confirms the definition of 'beneficial owner' of the current proposal, as credit institutions cannot obtain the required information from companies or public registries. The combination of those two provision could have serious adverse effects on the financing of companies (especially SMEs) and a negative impact on the economy. Moreover, this provision might seriously undermine the interests of law enforcement and prosecution authorities in monitoring the business activities of persons suspected of being involved in crimes or terrorist activities, and hence frustrate the efforts of the authorities to keep tracking such cases.

Amendment by Theresa Villiers

Amendment 55
Article 8, paragraph 3

3. 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.

3. 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 ***whose data have been obtained after entry into force of this Directive*** on a risk-sensitive basis.

Or. en

Justification

As currently drafted, this provision would require due diligence over customer identification data existing before the entry into force of the Directive. This would mean that checks would have to be carried out on all existing data which would be a hugely onerous task and would cause great inconvenience to consumers. This is surely not intended by the drafters of the proposal.

Amendment by Theresa Villiers

Amendment 56
Article 10, paragraph 3, point (c a) (new)

(ca) insurance premium funding;

Or. en

Justification

Insurance premium funding carries a very low money-laundering risk. Many insurers require that motor, home and businesses insurance premiums are paid in full at the beginning of the insurance period. Lenders are prepared to advance the full premium amount to the insurance broker or insurer and the individuals or businesses repay the loan by instalments. Should the insurance be cancelled, and therefore the loan, any return of premium due is repaid to the lender, not to the individual or business that takes out the insurance. The loan that is linked to the premium should be eligible for the exemption, as the money-laundering risk is very low

Amendment by Piia-Noora Kauppi

Amendment 57
Article 10, paragraph 3, point (c a) (new)

(ca) insurance premium funding;

Or. en

Justification

Insurance premium funding carries a very low money-laundering risk. Many insurers in Member States require that motor, home and businesses insurance premiums are paid in full at the beginning of the insurance period. Lenders are prepared to advance the full premium amount to the insurance broker or insurer and the individuals or businesses repay the loan by instalments. Should the insurance be cancelled, and therefore the loan, any return of premium due is repaid to the lender, not to the individual or business that takes out the insurance. The loan that is linked to the premium should be eligible for the exemption, as the money-laundering risk is very low.

Amendment by Theresa Villiers

Amendment 58

Article 11, paragraph 1, subparagraph 2, point (a)

(a) measures such as ensuring that the customer's identity is established by additional **documentary evidence**;

(a) measures such as ensuring that the customer's identity is established by additional **documents, data or information**;

Or. en

Justification

The classification of all non face-to-face transactions as high risk does not take into consideration the risk profiles of individual products and contradicts the Directive's aim of a more risk-based approach. Lenders should be able to continue to verify identity by electronic means. The requirement for additional documentary evidence would impose a significant increase in the administrative burden and pose additional security risks (with documents sent via unreliable postal systems). Many lenders have invested heavily in the development of electronic verification systems. If electronic checking processes were scaled back in favour of manual checks customers would suffer a great deal of unnecessary inconvenience.

Amendment by Piia-Noora Kauppi

Amendment 59

Article 11, paragraph 1, subparagraph 3, introductory phrase

In respect of cross-frontier correspondent banking relationships with credit institutions from **other Member States or** third countries, Member States shall require their credit institutions to:

In respect of cross-frontier correspondent banking relationships with credit institutions from third countries, Member States shall require their credit institutions to:

Justification

This provision should not include correspondent banking relationships between Member States of the European Union. There is absolutely no need to subject correspondent banking relationships between EU Member States to such a provision, as they apply similar standards in the fight against money laundering. This provision should therefore be limited to correspondent banking relationships with third countries.

Amendment by Piia-Noora Kauppi

Amendment 60

Article 11, paragraph 1, subparagraph 4, point (a)

(a) have appropriate risk **management systems** to determine whether the customer is a politically exposed person;

(a) have appropriate **risk-based procedures in place** to determine whether the customer is a politically exposed person;

Or. en

Justification

The expression 'risk management systems' is too vague and does not represent a workable tool to apply enhanced customer due diligence to politically exposed persons. Institutions and persons covered by this Directive should, in fact, apply appropriate procedures or policies to determine whether the customer is a politically exposed person. Based on these procedures and policies, those institutions and persons would have to install appropriate IT management where necessary. In all cases, the term 'risk management system' is not appropriate.

Amendment by Theresa Villiers

Amendment 61

Article 11, paragraph 1, subparagraph 4, point (a)

(a) have appropriate **risk management systems** to determine whether the customer is a politically exposed person;

(a) have appropriate **risk-based procedures in place** to determine whether the customer is a politically exposed person;

Or. en

Justification

Article 11 provides that institutions covered by the Directive should have 'risk management systems' in place for identifying PEPs. This expression is too vague. Institutions and persons covered by this Directive should, in fact, apply appropriate procedures or policies to determine whether the customer is a politically exposed person. Institutions would obviously need appropriate IT and other systems to ensure their procedures work effectively.

Amendment by Giuseppe Gargani

Amendment 62

Article 11, paragraph 1, subparagraph 4, point (a)

(a) have appropriate **risk management systems** to determine whether the customer is a politically exposed person;

(a) have appropriate **procedures** to determine whether the customer is a politically exposed person;

Or. it

Justification

The current provision is inconsistent with an approach based on differing risk situations, taking into account, as well, the fact that the European Union must be regarded as a single jurisdiction. It follows, on the one hand, that persons entrusted with prominent political functions in countries which belong to the European Union should be excluded from the scope of that provision, as is already provided with reference to domestic PEPs (i.e. those resident in individual States) and, on the other hand, that the definition of such persons should be limited to those entrusted with prominent political functions at national level.

Amendment by Piia-Noora Kauppi

Amendment 63

Article 11, paragraph 2

2. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank **or a respondent bank which permits its accounts to be used by shell banks**.

2. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank.

Or. en

Justification

In practice, the prohibition on credit institutions entering into or continuing a correspondent banking relationship with a respondent bank which permits its accounts to be used by shell banks (i.e. indirect relationships with shell banks) cannot be applicable, as banks would have no means of verifying whether their respondents have relations with shell banks. An obligation to know 'the customer's customer' is generally not workable, regardless of whether the customer is another credit institution, legal entity or natural person. This inapplicable provision would only lead to bureaucracy and red tape, i.e. sending and filing questionnaires without any possibility of verification.

Amendment by Giuseppe Gargani

Amendment 64
Article 11, paragraph 2

2. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank **or a respondent bank which permits its accounts to be used by shell banks.**

2. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank.

Or. it

Justification

While it is certainly proper to prohibit banks from entering into or continuing relationships with banks which represent so-called 'letterboxes' (shell banks), it is impossible to endorse a provision requiring banks not to have relationships with correspondent banks which in turn permit their accounts to be used by shell banks. Such a provision raises the problem of what are known as indirect relationships, with the effect of imposing obligations on a bank which are impracticable: in practice, it is impossible actually to verify whether a bank's own correspondent bank has relationships with shell banks or not.

Amendment by Piia-Noora Kauppi

Amendment 65
Article 12, paragraph 2

However, the ultimate responsibility shall remain with **the institution or person covered by this Directive which relies on** the third party.

The ultimate responsibility shall remain with the third party **in such cases.**

Or. en

Justification

The Directive permits those covered to rely on third parties to carry out the due diligence checks in Article 12. At the same time, however, ultimate responsibility for checks remains with the institution or person covered by the scope of the Directive. Although this rule might enhance the readiness of third parties to pass on information, it does not reduce the considerable burden placed on the institutions or persons concerned. Faced with ultimate responsibility, there is no incentive for them to rely on information by the introducer without double-checking, which means that, in practice, identification checks would be duplicated anyway.

Amendment by Theresa Villiers

Amendment 66
Article 12 a (new)

Article 12a

In any event, each Member State shall recognise and accept the domestic laws of any other Member State arising out of the implementation of this Directive as being in full compliance with its domestic laws. As a result, institutions and persons subject to this Directive in one Member State shall be required to accept customer identification procedures carried out by them in or through their branches, subsidiaries and affiliates in any other Member State in accordance with the domestic laws of that other Member State arising out of the implementation of this Directive.

Or. en

Justification

There is currently no consistency in the way that each Member State is enacting the Second Money-Laundering Directive (Member States have differing prescriptive documentary requirements regarding client identification). This failure is resulting in additional costs to customers and regulated businesses and hindering business in the European Union at a practical level, as well as giving an unfair advantage to one State at the expense of another, depending on how different the level of requirements might be.

Amendment by Theresa Villiers

Amendment 67
Article 14, paragraph 2

Relevant copies of identification **and** verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded by the third party to the institution or person to which the customer is being referred on request.

Relevant copies of identification **or** verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded by the third party to the institution or person to which the customer is being referred on request.

Or. en

Justification

Financial institutions increasingly hold electronic rather than physical records on their retail clients. The current wording 'relevant copies of identification and verification data' could inhibit this. Article 7 of the Directive does not oblige the bank to keep a physical copy of identification documents. This amendment makes Article 14 more consistent with Article 7.

Amendment by Piia-Noora Kauppi

Amendment 68

Article 14, paragraph 2

Relevant copies of identification **and** verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded by the third party to the institution or person to which the customer is being referred on request.

Relevant copies of identification **or** verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded by the third party to the institution or person to which the customer is being referred on request.

Or. en

Justification

In the light of the digitisation of society financial institutions increasingly no longer hold physical files on their retail clients. They only have electronic files. The wording 'relevant copies of identification and verification data' could inhibit this. Article 7 of the Third Money-Laundering Directive, however, does not oblige the bank carrying out customer due diligence to keep a physical copy of the identification document. The Third Money-Laundering Directive should therefore not indirectly oblige financial institutions to do this anyway to make third-party customer due diligence possible. Third-party customer due diligence is an important aspect for financial institutions, especially with respect to internet banking. What is essential is that verification data is transmitted to the receiving financial institution. This could be the number of the identification document or a copy of the identification document.

Amendment by Giuseppe Gargani

Amendment 69

Article 16

This **Section** shall not apply **to outsourcing or agency relationships** where on the basis of a contractual **arrangement the outsourcing service provider or agent** is to be **regarded as synonymous with** the institution or person **covered by** this Directive.

Articles 13 to 15 of this Directive shall not apply **if there is an agency relationship with the institutions or persons subject to the Directive itself with regard to fulfilment of the requirements laid down in points (a), (b) and (c) of Article 7(1)**, where, on the basis of a contractual **agreement**, the agent is **deemed** to be **part of** the institution or person **subject to** this Directive **with regard**

to the due diligence procedures relating to customers.

Or. it

Justification

This provision should be limited to agency relationships alone; it is actually inappropriate to refer to external operators (outsourcers) if they are governed by specific externalisation contracts which do not always regard them as part of a bank's internal structure.

Amendment by Theresa Villiers

Amendment 70

Article 16

This Section shall not apply to outsourcing or agency relationships ***where on the basis of a contractual arrangement*** the outsourcing service provider or agent ***is to be regarded as synonymous*** with the institution or person covered by this Directive.

This Section shall not apply to outsourcing or agency relationships ***whereby*** the outsourcing service provider or agent ***has entered into a contractual arrangement*** with the institution or person covered by this Directive.

Or. en

Justification

Customer due diligence is often carried out by third parties such as car dealers, retail sales staff or employers (in the case of corporate credit card products). It is difficult to see how these parties can be 'synonymous' with the institution or person covered by the Directive. It is unclear what is meant by the term 'synonymous', which is not a legal concept.

Amendment by Piia-Noora Kauppi

Amendment 71

Article 18, paragraph 2 a (new)

Adequate resources in the Member States shall ensure that the financial intelligence unit provides to the institutions and persons covered by this Directive timely and specific feedback on the effectiveness of and follow-up to reports of suspected money-laundering transactions.

Or. en

Justification

In order to apply anti-money-laundering measures efficiently, credit institutions must be able to rely on timely and specific (case-by-case) feedback provided by the competent authorities. This is essential for credit institutions to assess/improve the IT tools and procedures. Besides that, credit institutions virtually depend on information concerning every single case just to decide whether the respective business relationship has to be ended or could be continued. The current wording concerning financial intelligence unit feedback is too non-committal and should be strengthened. It remains of paramount importance that these financial intelligence units receive adequate resources from Member States and are properly staffed.

Amendment by Giuseppe Gargani

Amendment 72

Article 21, paragraph 3 a (new)

Those professions the legal status of which makes the provision of the service obligatory, up to the limits of manifest illegality, shall be exempt from the requirement to refrain therefrom.

Or. it

Justification

It is unacceptable for professional operators who suspect money-laundering activity to have to refrain from carrying out their own services (Article 21) if the financial intelligence unit so instructs them.

In the field of private transactions legislators can only set a clear, unambiguous and non-discretionary limit to the power to refuse to provide a professional service, in defence of the right of individuals to make their own legal arrangements in exercising their constitutional economic freedoms.

This rule provides that a service may be refused only in the case of manifest (doubt is not enough) illegality; and there are no legal hypotheses of temporary suspension.

Amendment by Piia-Noora Kauppi

Amendment 73

Article 25, paragraph 1

The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles

The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles

19, 20 and 21 or that a money laundering investigation is being or may be carried out.

19, 20 and 21 or that a money laundering investigation is being or may be carried out.
Member States may, however, opt to permit the competent authorities to inform institutions and persons subject to the Directive of information transmitted to the financial intelligence unit or that a money-laundering investigation is being carried out.

Or. en

Justification

In some Member States suspicious transaction reports must be reported not only to the financial intelligence unit but to law enforcement and police authorities, as well. Furthermore, it is vital in certain circumstances to allow banks to inform other banks of possible subsequent money-laundering attempts. Finally, it must also be clear that the sharing of information between credit institutions (or even within the same institution), under the conditions laid down in the Directive, does not constitute any breach of confidentiality.

Amendment by Piia-Noora Kauppi

Amendment 74
Article 25, paragraph 1 a (new)

The term ‘third persons’ covers neither criminal prosecution authorities nor the institutions and persons referred to in Article 2(1), subparagraphs (1) and (2).

Or. en

Amendment by Piia-Noora Kauppi

Amendment 75
Article 25, paragraph 1 b (new)

The non-disclosure obligation shall not be applied when a person or institution subject to this Directive is charged with specific disclosure obligations under national legislation.

Or. en

Amendment by Piia-Noora Kauppi

Amendment 76
Article 29, paragraph 2 a (new)

Member States shall ensure that a consolidated review of these statistical reports is published.

Or. en

Justification

Statistics on the number of investigations, prosecutions and convictions following suspicious activity reports must be improved. In this context, statistics should cover not only the number of suspicious transaction reports but also the follow-up given to those reports, the number of cases investigated, the number of persons prosecuted and the number of persons convicted.

Amendment by Theresa Villiers

Amendment 77
Article 29 a (new)

Article 29a

Member States shall apply the derogation provided for in Article 13(1), point (d) of Directive 95/46/EC when such derogation constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences related to money laundering.

Or. en

Justification

Institutions and persons covered by the money-laundering directives are often confronted with potential conflicts between the requirements of anti-money-laundering legislation and data protection legislation. Article 13(1)(d) of the Data Protection Directive (Directive 95/46/EC) offers Member States the possibility of derogating from some of its requirements, if necessary, in order to prevent, investigate, detect, and prosecute criminal offences, but not all Member States have done this. It would therefore be useful if a provision were included in the Money-Laundering Directive whereby this derogation was made mandatory.

Amendment by Piia-Noora Kauppi

Amendment 78
Article 31, paragraph 3

3. Member States shall ensure that, **wherever practicable**, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering is provided.

3. Member States shall ensure that timely feedback on the effectiveness of and follow-up to reports of suspected money laundering **or terrorist financing** is provided.

Or. en

Justification

In order to apply anti-money-laundering measures efficiently, credit institutions must be able to rely on timely and specific (case-by-case) feedback provided by the competent authorities. This is essential for credit institutions to assess/improve IT tools and procedures. Besides that, credit institutions virtually depend on information concerning every single case just to decide whether the business relationship concerned has to be ended or could be continued. The current wording concerning financial intelligence unit feedback is too non-committal and should be strengthened. It remains of paramount importance that these financial intelligence units receive adequate resources from Member States and are properly staffed.

Amendment by Giuseppe Gargani

Amendment 79

Article 31, paragraph 3

3. Member States shall ensure that, **wherever practicable**, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering is provided.

3. Member States shall ensure that timely **and specific** feedback on the effectiveness of and follow-up to reports of suspected money laundering is provided.

Or. it

Justification

Experience accumulated to date since the anti-money-laundering legislation came into force shows that, in order to apply anti-money-laundering measures effectively, banks and other bodies involved in combating this form of crime must be able to count on specific, timely feedback from the competent authorities. While the current provision in the proposal for a Directive can certainly be endorsed, it nonetheless ought to be strengthened.

Amendment by Klaus-Heiner Lehne

Amendment 80

Article 37, paragraph 1, introduction

1. In order to take account of technical developments in the fight against money laundering and to ensure uniform application of this Directive, the Commission shall, in

1. In order to take account of technical developments in the fight against money laundering **and terrorist financing** and to ensure uniform application of this Directive,

accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

the Commission shall, in accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

Or. de

Justification

This amendment follows on from the amendment that terrorist financing should be defined as a separate criminal offence alongside the definition of money laundering (see amendment to Article 1, paragraph 1, and Article 1, paragraph 3 (new)).

Amendment by Klaus-Heiner Lehne

Amendment 81
Article 37, paragraph 1(a)

(a) clarification of the technical aspects of the definitions in Article 1(2) and in Article 3(2)(a) and (d), (5), (8), (9), (10), (11) and (12);

(a) clarification of the technical aspects of the definitions in Article 1(2) **and 2a** and in Article 3(2)(a) and (d), (5), (8), (9), (10), (11) and (12);

Or. de

Justification

This amendment follows on from the amendment that terrorist financing should be defined as a separate criminal offence alongside the definition of money laundering (see amendment to Article 1, paragraph 1, and Article 1, paragraph 3 (new)).

Amendment by Theresa Villiers

Amendment 82
Article 37, paragraph 3 a (new)

3a. In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European

Parliament and the Council; the need to ensure that competent authorities will be able to ensure compliance with the rules consistently; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to respect the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive basis approach; the need to ensure coherence with other EU legislation in this area; and the need to protect the European Union, its Member States and their citizens from the consequences of money laundering and terrorist financing.

Or. en

Justification

It is vitally important that the comitology is transparent and is carried out in full consultation with relevant stakeholders.

Amendment by Luis de Grandes Pascual

Amendment 83
Article 39

Within three years of the entry into force of this Directive, and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

Within three years of the entry into force of this Directive, and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council. ***The report shall relate, in particular, to the fields to be reviewed as laid down in Article 2 of Directive 2001/97/EC.***

Or. es

Justification

To ensure that the review provided for in the second directive (Directive 2001/97/EC) is also carried out under the third.