

AMENDMENTS 001-150

Committee on Economic and Monetary Affairs
 Committee on Civil Liberties, Justice and Home Affairs

Report**Krišjānis Kariņš, Judith Sargentini****A7-0150/2014**

Prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Proposal for a directive (COM(2013)0045) – C7-0032/2013 – 2013/0025(COD))

Amendment 1**Proposal for a directive****Recital 1***Text proposed by the Commission*

(1) Massive flows of **dirty** money can damage the stability and reputation of the financial sector and threaten the single market, and **terrorism** shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.

Amendment

(1) Massive flows of **illicit** money can damage the stability and reputation of the financial sector and threaten the single market and **international development**. **Terrorism** shakes the very foundations of our society. **The key facilitators of illicit money flows are secretive corporate structures operating in and through secrecy jurisdiction, often also referred to as tax havens.** In addition to **further developing** the criminal law approach **at Union level, prevention** via the financial system **is indispensable and** can produce **complementary** results. **However, the preventive approach should be targeted and proportional, and should not result in the establishment of a comprehensive system for controlling the entire population.**

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, *if* certain coordinating measures are *not adopted* at Union level.

Amendment

(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails. ***Therefore***, certain coordinating measures are ***necessary*** at Union level. ***At the same time, the objectives of protection of society from criminals and protection of the stability and integrity of the European financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs. Any requirement imposed on obliged entities to fight money laundering and terrorist financing should therefore be justified and proportionate.***

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) The current proposal is the fourth Directive to deal with the threat of money laundering. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering²⁵ defined money laundering in terms of drugs offences and

Amendment

(3) The current proposal is the fourth Directive to deal with the threat of money laundering. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering²⁵ defined money laundering in terms of drugs offences and

imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council of December 2001 amending Council Directive 91/308/EEC²⁶ extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the Financial Action Task Force (hereinafter referred to as the FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. These changes were reflected in 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 financing²⁷ and Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis²⁸.

²⁵ OJ L 166, 28.6.1991, p. 77.

²⁶ OJ L 344, 28.12.2001, p. 76.

²⁷ OJ L 309, 25.11.2005, p. 15.

²⁸ OJ L 214, 4.8.2006, p. 29.

imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council of December 2001 amending Council Directive 91/308/EEC²⁶ extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the Financial Action Task Force (hereinafter referred to as the FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. These changes were reflected in 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 financing²⁷ and Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis²⁸. ***In***

implementing the FATF Recommendations, the Union should fully respect its data protection law, as well as the Charter of Fundamental Rights of the European Union and of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

²⁵ OJ L 166, 28.6.1991, p. 77.

²⁶ OJ L 344, 28.12.2001, p. 76.

²⁷ OJ L 309, 25.11.2005, p. 15.

²⁸ OJ L 214, 4.8.2006, p. 29.

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even European Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the European Union in this field should therefore be **consistent with** other action undertaken in **other** international fora. The European Union action should continue to take particular account of the Recommendations of the FATF, **which constitutes the foremost** international **body** active in the fight against money laundering and terrorist financing. With the view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should be aligned with the new FATF Recommendations adopted and expanded in February 2012.

Amendment

(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even European Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the European Union in this field should therefore be **compatible with and at least as stringent as** other action undertaken in **the** international fora. ***Avoiding tax and mechanisms of non-disclosure and concealment can be used as strategies employed in money laundering and terrorist financing in order to avoid detection.*** The European Union action should continue to take particular account of the Recommendations of the FATF, **and other** international **bodies** active in the fight against money laundering and terrorist financing. With the view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should, **where appropriate**, be aligned with the new FATF Recommendations adopted and expanded in February 2012. ***However, it is essential for such an alignment with the non-binding FATF Recommendations to be carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union.***

Amendment 5

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Particular attention should be paid to the fulfilment of the obligations set out in Article 208 of the Treaty on the Functioning of the European Union, which requires coherence in development cooperation policy, in order to stem the increasing trend of money laundering activities being moved from developed countries to developing countries with less stringent anti-money laundering legislation.

Amendment 6

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) In view of the fact that illicit financial flows, and in particular money laundering, represent, in developing countries, between 6 and 8,7 % of their GDP^{28a}, which is an amount 10 times larger than the assistance by the Union and its Member States to the developing world, the measures taken to combat money laundering and terrorist financing need to be coordinated and to take into account the Union's and the Member States' development strategy and policies which aim to fight against capital flight.

^{28a} Sources: "Tax havens and development. Status, analyses and measures", NOU, Official Norwegian Reports, 2009.

Amendment 7

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(5) Furthermore, the misuse of the financial

(5) Furthermore, 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 preventive measures of this Directive should cover **not only** the manipulation of money derived from **crime but also** the collection of money or property for terrorist purposes.

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 preventive measures of this Directive should cover the manipulation of money derived from **serious crime and** the collection of money or property for terrorist purposes.

Amendment 8

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Irrespective of the penalties provided for in the Member States, the primary objective of all measures taken under this Directive should be to combat all practices which result in substantial illegal profits being generated. It should do so by taking all possible steps to prevent the financial system from being used to launder these profits.

Amendment 9

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) The use of large cash payments is vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural or legal persons **trading in goods** should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 500 or more. Member States may decide to adopt stricter provisions including a lower threshold.

(6) The use of large cash payments is vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural or legal persons should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 500 or more. Member States may decide to adopt stricter provisions including a lower threshold.

Amendment 10

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Electronic money products are increasingly used as a substitute for having a bank account. The issuers of such products should be under a strict obligation to prevent money laundering and terrorist financing. However, electronic money products may be exempted from customer due diligence, if certain accumulative conditions are fulfilled. The use of electronic money that is issued without performing customer due diligence should only be allowed for the purchase of goods and services from merchants and providers who are identified and whose identification is verified by the electronic money issuer. For person-to-person transfers, the use of electronic money without performing customer due diligence should not be allowed. The amount stored electronically should be sufficiently small in order to avoid loopholes and to make sure that a person cannot obtain an unlimited amount of anonymous electronic money products.

Amendment 11

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Real estate agents are active in many different ways in the field of property transactions in the Member States. In order to reduce the risk of money-laundering in the property sector they should be included in the scope of this Directive if they are involved in financial transactions relating to property as part of their professional activities.

Justification

The role of real estate agents varies across the Member States. Their activities include setting up contacts and involvement in financing and conveyancing. Only those activities connected

with financial transactions are significant in terms of preventing money laundering (see Recommendation No 22 of the FATF). This will help the Member States to implement the Directive in a unified and purposeful way.

Amendment 12

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) It is important to expressly highlight that ‘tax crimes’ related to direct and indirect taxes are included in the **broad** definition of ‘criminal activity’ under this Directive in line with the revised FATF Recommendations.

Amendment

(9) It is important to expressly highlight that ‘tax crimes’ related to direct and indirect taxes are included in the definition of ‘criminal activity’ under this Directive in line with the revised FATF Recommendations. ***The European Council of 23 May 2013 stated the need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and jurisdictions. Agreeing on a definition of tax crimes is an important step in detecting those crimes, as too is public the disclosure of certain financial information by large companies operating in the Union on a country-by-country basis. It is also important to ensure that obliged entities and legal professionals, as defined by Member States, do not seek to frustrate the intent of this Directive or to facilitate or to engage in aggressive tax planning.***

Amendment 13

Proposal for a directive

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Member States should introduce General Anti-Avoidance Rules (GAAR) on tax matters with a view to curbing aggressive tax planning and avoidance in accordance with the European Commission's recommendations on Aggressive Tax Planning on December 12th 2012 and the OECD Progress Report

to the G20 on 5 September 2013.

Justification

Aggressive tax avoidance, although technically legal can bring the morality of tax law into disrepute. GAAR's are a useful tool in discouraging aggressive tax avoidance and improving transparency in corporate behaviour.

Amendment 14

**Proposal for a directive
Recital 9 b (new)**

Text proposed by the Commission

Amendment

(9b) When they are performing or facilitating commercial or private transactions, entities which have a specific role in the financial system, such as the European Investment Bank, the European Bank for Reconstruction and Development, the Central Banks of the Member States and Central Settlement Systems should, as far as possible, observe the rules applicable to other obliged entities adopted pursuant to this Directive.

Amendment 15

**Proposal for a directive
Recital 10**

Text proposed by the Commission

Amendment

(10) There is a need to identify any natural person who exercises ownership or control over a legal person. While finding a percentage shareholding will not automatically result in finding the beneficial owner, it ***is an evidential factor to be taken into account***. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and should follow the chain of ownership until the natural person who exercises ownership or control of the legal person that is the customer is found.

(10) There is a need to identify any natural person who exercises ownership or control over a legal person. While finding a ***specific*** percentage shareholding will not automatically result in finding the beneficial owner, it ***is one factor among others for the identification of the beneficial owner***. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and should follow the chain of ownership until the natural person who exercises ownership or control of the legal person that is the customer is found.

Amendment 16

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) The *need* for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies retain information on their beneficial ownership and make this information available to competent authorities and obliged entities. In addition, trustees should declare their status to obliged entities.

Amendment

(11) ***It is important to ensure, and to enhance, the traceability of payments.*** The existence of accurate and up-to-date information on the beneficial owner ***of any legal entity, such as legal persons, trusts, foundations, holdings and all other similar existing or future legal arrangements*** is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies retain information on their beneficial ownership and make ***adequate, accurate and up-to-date*** information available ***through central public registers, accessible on-line and in an open and secure data format, in accordance with Union data protection rules and the right to privacy as enshrined in the Charter of Fundamental Rights of the European Union. Access to such registers should be granted to competent authorities, in particular FIUs and obliged entities, as well as to the public subject to prior identification of the person wishing to access the information and to the possible payment of a fee.*** In addition, trustees should declare their status to obliged entities.

Amendment 17

Proposal for a directive

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The establishment of beneficial ownership registers by Member States would significantly improve the fight against money laundering, terrorist financing, corruption, tax crimes, fraud and other financial crimes. This could be

achieved by improving the operations of the existing business registers in the Member States. It is vital that registers are interconnected if effective use is to be made of the information contained therein, due to the cross-border nature of business transactions. The interconnection of business registers across the Union is already required by Directive 2012/17/EU of the European Parliament and of the Council^{28b} and should be further developed.

^{28b} *Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register (OJ L 156, 16.6.2012, p. 1).*

Amendment 18

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) Technological progress has provided tools which enable obliged entities to verify the identity of their customers when certain transactions occur. Such technological improvements provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The competent authorities of Member States and obliged entities should be proactive in combating new and innovative ways of money laundering, while respecting fundamental rights, including the right to privacy and data protection.

Amendment 19

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The representatives of the Union in the governing bodies of the EBRD should encourage the EBRD to implement the provisions of this Directive and to publish on its website an anti-money laundering policy, containing detailed procedures that would give effect to this Directive.

Justification

Based on the wording used in EU legal acts concerning the EBRD

Amendment 20

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an obligation for **all** providers of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. Member States should consider applying this threshold to the collection of winnings as well as wagering a stake. Providers of gambling services **with physical premises (e.g. casinos and gaming houses)** should ensure that customer due diligence, if it is taken at the point of entry **to the premises**, can be linked to the transactions conducted by the customer **on those premises**.

(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an obligation for providers of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. **When carrying out that due diligence a risk based approach should be adopted that reflects the different risks for different types of gambling services and whether they represent a high or low risk for money laundering. The special characteristics of different types of gambling should also be taken into account, by, for example, differentiating between casinos, on-line gambling or other providers of gambling services.** Member States should consider applying this threshold to the collection of winnings as well as wagering a stake. Providers of gambling services should ensure that customer due diligence, if it is taken at the point of entry can be linked to the transactions conducted by the customer.

Amendment 21

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Money laundering is becoming increasingly sophisticated and also includes illegal, and sometimes legal, betting, in particular in relation to sporting events. New forms of lucrative organised crime like match-fixing have arisen and have developed into a profitable form of criminal activity related to money laundering.

Amendment 22

Proposal for a directive Recital 14

Text proposed by the Commission

Amendment

(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the European Union and those operating within it.

(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a ***holistic*** risk-based approach ***based on minimum standards*** should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the European Union and those operating within it.

Amendment 23

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) Underpinning the risk-based approach is a need for Member States to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been

(15) Underpinning the risk-based approach is a need for Member States ***and the Union*** to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has

recognised at international level, and the European Supervisory Authority (European Banking Authority) (hereinafter ‘EBA’), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC²⁹; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter ‘EIOPA’), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC³⁰; and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC³¹, should be tasked with issuing an opinion on the risks affecting the financial sector.

²⁹ OJ L 331, 15.12.2010, p. 12.

³⁰ OJ L 331, 15.12.2010, p. 48.

³¹ OJ L 331, 15.12.2010, p. 84.

been recognised at international level, and the European Supervisory Authority (European Banking Authority) (hereinafter ‘EBA’), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC²⁹; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter ‘EIOPA’), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC³⁰; and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC³¹, should be tasked with issuing an opinion on the risks affecting the financial sector *and, in cooperation with Member States, should develop minimum standards for risk assessments carried out by the competent national authorities. That process should, as far as possible, involve relevant stakeholders through public consultations.*

²⁹ OJ L 331, 15.12.2010, p. 12.

³⁰ OJ L 331, 15.12.2010, p. 48.

³¹ OJ L 331, 15.12.2010, p. 84.

Amendment 24

Proposal for a directive Recital 16

Text proposed by the Commission

(16) The results of risk assessments **at Member State level** should, where appropriate, be made available to obliged entities to enable them to identify, understand and mitigate their own risks.

Amendment

(16) The results of risk assessments should, where appropriate, be made available **in a timely manner** to obliged entities to enable them to identify, understand and mitigate their own risks.

Amendment 25

Proposal for a directive Recital 17

Text proposed by the Commission

(17) In order to better understand and mitigate risks at European Union level, Member States should share the results of their risk assessments with each other, the Commission and EBA, EIOPA and ESMA, where appropriate.

Amendment

(17) In order to better understand and mitigate risks at European Union level, **a supranational risk analysis should be carried out, so that the risks of money laundering and terrorist financing to which the internal market is exposed can be identified effectively. The Commission should require the Member States to deal with scenarios considered to be high-risk in an effective way. Furthermore,** Member States should share the results of their risk assessments with each other, the Commission and EBA, EIOPA, ESMA **and Europol**, where appropriate.

Justification

In order to provide a clear interpretation of the link between various levels of risk analysis, there is a need for a recital that states that supranational risk analysis must be implemented effectively by the Member States, especially for high-risk situations.

Amendment 26

Proposal for a directive Recital 21

Text proposed by the Commission

(21) This is particularly true of **business** relationships with individuals holding, or

Amendment

(21) This is particularly true of relationships with individuals holding, or

having held, important public positions, particularly those from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international organisations.

having held, important public positions, particularly those from countries where corruption is widespread, ***within the Union and internationally***. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international organisations.

Amendment 27

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The need for enhanced customer due diligence measures in respect of persons who hold or have held prominent functions, whether domestically or abroad, and senior figures in international organisations should not, however, lead to a situation in which lists containing information on such persons are traded for commercial purposes. Member States should take appropriate measures to prohibit such activity.

Amendment 28

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) It is essential for the Union to develop a common approach and a common policy to deal with non-cooperative jurisdictions that perform poorly in combating money laundering and terrorist financing. To that end, the Member States should act on and apply directly any lists of countries published by the FATF in their national systems to

combat money laundering and terrorist financing. Furthermore, the Member States and the Commission should identify other non-cooperative jurisdictions on the basis of all information available. The Commission should develop a common approach to measures to be used to protect the integrity of the internal market against these non-cooperative jurisdictions.

Justification

Il est essentiel d'introduire des mesures ambitieuses au sein des cadres juridiques nationaux relatives à une approche européenne cohérente à l'égard des juridictions non coopératives, et il doit être clair que les listes du GAFI doivent être considérées comme obligatoires par tous les Etats membres. La Directive doit précisément donner la possibilité à l'Union européenne d'adopter une approche commune et de prendre des mesures (coordonnées entre les EM ou laissée à la libre appréciation d'un Etat membre) à l'égard de pays qui ne seraient pas listés par les Déclarations publiques du GAFI, mais qui sont identifiées comme présentant un risque ou des défaillances importantes en matière de lutte contre le blanchiment de capitaux et le financement du terrorisme.

Amendment 29

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may only arise from contract and not from this Directive. The responsibility for complying with this Directive should remain with the obliged entity ***covered hereby.***

Amendment

(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may only arise from contract and not from this Directive. The responsibility for complying with this Directive should ***primarily*** remain with the obliged entity. ***In addition, Member States should ensure that any such third parties may be held liable for breaches of national provisions adopted pursuant to this Directive.***

Amendment 30

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) All Member States have, or should, set up financial intelligence units (hereinafter referred to as FIUs) to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. Suspicious transactions should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs.

Amendment

(25) All Member States have, or should, set up ***operationally independent and autonomous*** financial intelligence units (hereinafter referred to as FIUs) to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. Suspicious transactions should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs. ***It is important that Member States provide FIUs with the necessary resources to ensure that they have full operational capacity to deal with the current challenges posed by money laundering and terrorist financing, while respecting fundamental rights, including the right to privacy and data protection.***

Amendment 31

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Since a huge proportion of illicit financial flows ends up in tax havens, the

Union should increase the pressure it brings to bear on those countries to cooperate, in order to combat money laundering and terrorist financing.

Amendment 32

Proposal for a directive Recital 29

Text proposed by the Commission

(29) There have been a number of cases of employees who report their suspicions of money laundering being subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering and anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect employees from such threats or hostile action.

Amendment

(29) There have been a number of cases of ***individuals, including*** employees ***and representatives*** who report their suspicions of money laundering being subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering and anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect ***individuals, including*** employees ***and representatives*** from such threats or hostile action, ***as well as from other adverse treatment or adverse consequences, making it easier for them to report suspicions, thereby strengthening the fight against money laundering.***

Amendment 33

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Regulation (EC) No 45/2001 of the European Parliament and of the Council^{31a} is applicable to the processing of personal data by the Union institutions and bodies for the purposes of this Directive.

^{31a} ***Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of***

individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Amendment 34

Proposal for a directive Recital 31

Text proposed by the Commission

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.

Amendment

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, ***identification of a politically exposed person***, sharing of information by competent authorities and sharing of information by financial institutions ***and obliged entities***. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.

Amendment 35

Proposal for a directive Recital 32

Text proposed by the Commission

(32) The fight against money-laundering and terrorist financing is recognised as an important public interest ground by all Member States.

Amendment

(32) The fight against money-laundering and terrorist financing is recognised as an important public interest ground by all Member States. ***The eradication of such phenomena requires a resolute political***

will and cooperation at all levels.

Amendment 36

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) It is of the utmost importance that investment that is co-financed by the Union budget fulfils the highest standards in order to prevent financial crimes including corruption and tax evasion. In 2008, the European Investment Bank therefore adopted an internal guideline entitled "Policy on preventing and deterring prohibited conduct in European Investment Bank activities" with Article 325 TFEU, Article 18 of the EIB Statute and Council Regulation (EC, Euratom) No 1605/2002 as its legal basis. Following the adoption of the policy, the EIB should report on suspicions or alleged cases of money laundering affecting EIB supported projects, operations and transactions to the Luxembourg Financial Intelligence Unit.

Amendment 37

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(33) This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including the provisions of Framework decision 977/2008/JHA.

deleted

Amendment 38

Proposal for a directive Recital 34

Text proposed by the Commission

(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations to this right in accordance with the rules laid down in Article 13 of Directive 95/46/EC may therefore be justified.

Amendment

(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations to this right in accordance with the rules laid down in Article 13 of Directive 95/46/EC may therefore be justified. ***However, such limitations have to be counterbalanced by the effective powers granted to the data protection authorities, including indirect access powers, laid down in Directive 95/46/EC, enabling them to investigate, either ex officio or on the basis of a complaint, any claims concerning problems with personal data processing. This should in particular include access to the data file at the obliged entity.***

Amendment 39

**Proposal for a directive
Recital 37**

Text proposed by the Commission

(37) Feedback should, ***where practicable***, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the EU-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews.

Amendment

(37) Feedback should, ***whenever possible***, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the EU-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews. ***The Commission should also include in its overviews an evaluation of national***

risk assessments. The first overview by the Commission should be carried out within one year from the date of entry into force of this Directive.

Amendment 40

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) Member States should not only ensure that obliged entities comply with the relevant rules and guidelines, but should also have systems in place that actually minimise the risks of money laundering within those entities.

Amendment 41

Proposal for a directive Recital 37 b (new)

Text proposed by the Commission

Amendment

(37b) To be able to review the effectiveness of their systems to combat money laundering and terrorist financing, Member States should keep and improve the relevant statistics. In order further to enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews.

Amendment 42

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) Improving the exchange of information between FIUs within the EU is of particular importance to face the transnational character of money

(40) Improving the exchange of information between FIUs within the EU is of particular importance to face the transnational character of money

laundering and terrorist financing. The use of secure facilities for the exchange of information, *especially the decentralised computer network FIU.net* and the techniques offered by *that* network should be encouraged by Member States.

laundering and terrorist financing. The use of secure facilities for the exchange of information and the techniques offered by *such facilities* should be encouraged by Member States.

Justification

A directive should define results and goals - not the precise instruments to achieve those. It should therefore be possible to choose the most efficient and best "protected channels of communication". Defining the instrument FIU.net in the Directive is therefore impossible both for legal and practical reasons. The same applies to Article 53.

Amendment 43

Proposal for a directive

Recital 41

Text proposed by the Commission

(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative measures. This diversity could be detrimental to the efforts put in combating money laundering and terrorist financing and the Union's response is at risk of being fragmented. This Directive should therefore include a range of administrative measures and sanctions that Member States shall have available for systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. This range should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics and areas of activity. In the

Amendment

(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative measures. This diversity could be detrimental to the efforts put in combating money laundering and terrorist financing and the Union's response is at risk of being fragmented. This Directive should therefore include a range of administrative measures and sanctions that Member States shall have available for systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. This range should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics, *level of risk* and areas of

application of this Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of ne bis in idem.

activity. In the application of this Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of ne bis in idem.

Amendment 44

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) To allow competent authorities and obliged entities to better evaluate the risks arising from certain transactions, the Commission should draw up a list of the jurisdictions outside the Union that have implemented rules and regulations similar to those laid down in this Directive.

Amendment 45

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular, the respect for private and family life, the right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.

(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular, the respect for private and family life, the ***presumption of innocence***, the right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.

Amendment 46

Proposal for a directive Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) Member States and obliged entities, when applying this Directive or national law implementing this Directive, are bound by Council Directive 2000/43/EC^{33a}.

^{33a} **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).**

Amendment 47

Proposal for a directive

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property **or of avoiding freezing or confiscation orders** or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

Amendment 48

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point b – point v

Text proposed by the Commission

Amendment

(v) creation, operation or management of trusts, companies or similar structures;

(v) creation, operation or management of trusts, **foundations, mutuels**, companies or similar structures;

Amendment 49

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point d

Text proposed by the Commission

Amendment

(d) real estate agents, including letting agents;

(d) real estate agents, including letting agents, ***in so far as they are involved in financial transactions***;

Justification

In Some Member States the task of real estate agents consists only in bringing together real estate buyers and sellers and does not include the formal act of conclusion of the contract and the relevant financial transactions, so the wording should be more specified.

Amendment 50

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point e

Text proposed by the Commission

Amendment

(e) other natural or legal persons trading in goods, only to the extent that payments are made or received in cash in an amount of EUR 7 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;

(e) other natural or legal persons trading in goods ***or services***, only to the extent that payments are made or received in cash in an amount of EUR 7 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;

Amendment 51

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point f

Text proposed by the Commission

Amendment

(f) providers of gambling services.

(f) providers of gambling services. ***With the exception of casinos, Member States may decide to exempt in full or in part, the providers of certain gambling services from national provisions transposing this Directive on the basis of the low risk posed by the nature of the operations that they provide or on the basis of risk assessments. Before applying any such exemption, the Member State concerned shall seek the approval of the Commission.***

Amendment 52

Proposal for a directive Article 3 – point 4 – point f

Text proposed by the Commission

(f) all offences, including tax **crimes** related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

Amendment

(f) all offences, including tax **offences** related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

This linguistic change is proposed to align in particular the English language version with other language versions making clear that criminal law tax offences are addressed.

Amendment 53

Proposal for a directive Article 3 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) "self-regulatory body" means a body that has the power, recognised by national law, to establish the obligations and rules governing a certain profession or a certain field of economic activity, which must be complied with by natural or legal persons in that profession or field;

Amendment 54

Proposal for a directive Article 3 – point 5

Text proposed by the Commission

(5) "beneficial owner" means any 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

Amendment

(5) "beneficial owner" means any 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 European Union legislation or subject to equivalent international standards.

*A percentage of 25% plus one share shall be evidence of **ownership or control through shareholding and applies to every level** of direct and indirect ownership;*

(ii) if there is any doubt that the person(s) identified in point (i) are the beneficial owner(s), the natural person(s) who exercises control over the management of a legal entity through other means;

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 European Union legislation or subject to equivalent international standards.

*in any event, a shareholding of 25 % plus one share **by a natural person** is evidence of direct ownership; a shareholding of 25 % plus one share in the customer, held by a corporate entity, which is under the control of a natural persons, or by multiple corporate entities, which are under the control of the same natural person, shall be an indication of indirect ownership; the notion of control shall be determined, inter alia, in accordance with the criteria laid down in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council^{42a}; however, this applies without prejudice to the right for Member States to decide that a lower percentage may be evidence of ownership or control;*

(ii) if there is any doubt that the person(s) identified in point (i) are the beneficial owner(s) *or if after taking all the necessary measures no person can be identified under point (i)*, the natural person(s) who exercises control over the management of a legal entity through other means, *which person(s) may include the senior management;*

(iia) where no natural person is identified under point (i) or (ii), the natural person(s) who holds the position of senior managing official, in which case, the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and (ii) in order to prove the inability to

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

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

(ii) 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; or

(iii) 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;

identify such persons;

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

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

(ii) 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; or

(iii) 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;

(iiia) for trusts, the identity of the settlor, trustee(s), the protector (if any), the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership);

^{42a} ***Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).***

Amendment 55

Proposal for a directive Article 3 – point 7 – point b

Text proposed by the Commission

(b) "domestic *politically exposed* persons" means natural persons who are or who have been entrusted by **a** Member State with prominent public functions;

Amendment

(b) "domestic *politically-exposed* persons" means natural persons who are, or who have been, entrusted by **the** Member State with prominent public functions;

Linguistic amendment

Amendment 56

Proposal for a directive Article 3 – point 7 – point d – point ii

Text proposed by the Commission

(ii) members of parliaments;

Amendment

(ii) members of parliaments **or similar legislative bodies**;

Amendment 57

Proposal for a directive Article 3 – point 7 – point d – point vi

Text proposed by the Commission

(vi) members of the administrative, management or supervisory bodies of State owned enterprises.

Amendment

(vi) **senior** members of the administrative, management or supervisory bodies of State owned enterprises.

Amendment 58

Proposal for a directive Article 3 – point 7 – point e – point iii

Text proposed by the Commission

(iii) **the children and their spouses or partners**;

Amendment

deleted

Amendment 59

Proposal for a directive Article 3 – point 7 – point e – point iv

Text proposed by the Commission

Amendment

(iv) the parents;

deleted

Amendment 60

Proposal for a directive

Article 3 – point 7 – point f – point ii

Text proposed by the Commission

Amendment

(ii) any natural person who has **sole** beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in points (7)(a) to (7)(d) above;

(ii) any natural person who has beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in points (7)(a) to (7)(d) above;

Amendment 61

Proposal for a directive

Article 3 – point 10 a (new)

Text proposed by the Commission

Amendment

(10a) ‘betting transaction’ in the sense of Article 12 of this Directive means all the stages in the commercial relationship between, on the one hand, the gambling service provider and, on the other, the customer and the beneficiary of the registration of the bet and the stake until the payout of any winnings;

Amendment 62

Proposal for a directive

Article 3 – point 11 a (new)

Text proposed by the Commission

Amendment

(11a) ‘non-face to-face’ when used in relation to business relationships or transactions means the carrying out of a contract or a transaction, without the simultaneous physical presence of the contractor or intermediary and the consumer, by making exclusive use of one or more of the following the internet,

telemarketing or other electronic means of communication up to and including the time at which the contract is concluded;

Justification

To be added as subpoint after 3 (11). The Directive should lay out a definition of non-face-to-face business relationships or transactions to avoid that intermediary business would be defined as non-face-to-face business.

Amendment 63

**Proposal for a directive
Article 4 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.

Amendment

1. Member States shall, ***in accordance with the risk-based approach***, ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.

Amendment 64

**Proposal for a directive
Article 5**

Text proposed by the Commission

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

Amendment

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, ***provided that such provisions are in full compliance with Union law, especially as regards Union data protection rules and the protection of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union. Such provisions shall not unduly prevent consumers from accessing financial services and shall not constitute an obstacle to the functioning of the Single Market.***

Amendment 65

Proposal for a directive

Article 6

Text proposed by the Commission

1. The European Banking Authority (hereinafter 'EBA'), European Insurance and Occupational Pensions Authority (hereinafter 'EIOPA') **and** European Securities and Markets Authority (hereinafter 'ESMA') **shall provide a joint opinion on the money laundering and terrorist financing risks affecting the internal market.**

Amendment

1. **The Commission shall produce an assessment on the money laundering and terrorist financing risks affecting the internal market, with particular reference to cross-border activities. In order to produce such an assessment, the Commission shall consult the Member States, the European Banking Authority (hereinafter "EBA"), the European Insurance and Occupational Pensions Authority (hereinafter "EIOPA"), the European Securities and Markets Authority (hereinafter "ESMA"), the EDPS, Article 29 Working Party, Europol and other relevant authorities.**

The risk assessment referred to in the first subparagraph shall cover at least the following aspects:

(a) the overall extent of money laundering and the areas of the internal market that are at greater risk;

(b) the risks associated with each relevant sector, in particular the non-financial sectors and the gambling sector;

(c) the most widespread means used by criminals to launder illicit proceeds;

(d) the recommendations to the competent authorities on the effective deployment of resources;

(e) the role of EUR notes in criminal activities and money laundering.

The risk assessment shall also include proposals for minimum standards for risk assessments to be conducted by competent national authorities. Those minimum standards shall be developed in cooperation with Member States and shall involve the industry and other relevant stakeholders through public consultations and private stakeholders meetings as

The *opinion* shall be provided within **2 years** from the date of entry into force of this Directive.

2. The Commission shall make *the opinion* available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing.

appropriate.

The *risk assessment* shall be provided within **one year** from the date of entry into force of this Directive **and shall be updated on a biannual basis or more frequently if appropriate.**

2. The Commission shall make the *risk assessment* available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing, **and to allow other stakeholders, including national legislators, the European Parliament, Europol, the Committee of European Financial Intelligence Units, EBA, EIOPA and ESMA, to better understand the risks. A summary of the assessment shall be publicly available. That summary shall not contain classified information.**

2a. The Commission shall submit an annual report to the European Parliament and the Council on the findings resulting from the regular risk assessments and the action taken based on those findings.

Amendment 66

Proposal for a directive Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

1. Without prejudice to the infringement proceedings provided for in the TFEU, the Commission shall ensure that national legislation to combat money laundering and terrorist financing, adopted by Member States on the basis of this Directive is implemented effectively and is consistent with the European framework.

2. For the application of paragraph 1, the Commission shall be assisted, where appropriate, by Europol, the Committee of European Financial Intelligence Units, EBA, EIOPA, ESMA and by any other

competent European authority.

3. Assessments of national legislation to combat money laundering and terrorist financing provided for in paragraph 1 shall be without prejudice to those conducted by the Financial Action Task Force or Moneyval.

Amendment 67

Proposal for a directive Article 7

Text proposed by the Commission

1. Each Member State shall take appropriate steps to identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, and keep the assessment up-to-date.

2. Each Member State shall designate an authority to co-ordinate the national response to the risks referred to in paragraph 1. The identity of that authority shall be notified to the Commission, EBA, EIOPA and ESMA and other Member States.

3. In carrying out the assessments referred to in paragraph 1, Member States **may** make use of the opinion referred to in Article 6(1).

4. Each Member State shall carry out the assessment referred to in paragraph 1 and:

(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing regime, in particular by identifying any areas where obliged entities shall apply enhanced measures and, where appropriate, specifying the measures to be taken;

(b) use the assessment(s) to assist it in the

Amendment

1. Each Member State shall take appropriate steps to identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, ***as well as any data protection concerns in that regard***, and keep the assessment up-to-date.

2. Each Member State shall designate an authority to co-ordinate the national response to the risks referred to in paragraph 1. The identity of that authority shall be notified to the Commission, EBA, EIOPA, ESMA, ***Europol*** and other Member States.

3. In carrying out the assessments referred to in paragraph 1, Member States **shall** make use of the ***risk assessment*** referred to in Article 6(1).

4. Each Member State shall carry out the assessment referred to in paragraph 1 and:

(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing regime, in particular by identifying any areas where obliged entities shall apply enhanced measures and, where appropriate, specifying the measures to be taken;

(aa) identify, where appropriate, sectors or areas of negligible, lower or greater risk of money laundering and terrorist financing;

(b) use the assessment(s) to assist it in the

allocation and prioritisation of resources to combat money laundering and terrorist financing;

(c) make appropriate information available to obliged entities to carry out their own money laundering and terrorist financing risk assessments.

5. Member States shall make the results of their risk assessments available to the other Member States, the Commission, and EBA, EIOPA and ESMA upon request.

Amendment 68

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available to competent authorities and self-regulatory bodies.

Amendment 69

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the

allocation and prioritisation of resources to combat money laundering and terrorist financing;

(ba) use the assessment(s) to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risk of money laundering;

(c) make appropriate information available ***in a timely manner*** to obliged entities ***to enable them*** to carry their own money laundering and terrorist financing risk assessments.

5. Member States shall make the results of their risk assessments available to the other Member States, the Commission, and EBA, EIOPA and ESMA upon request. ***A summary of the assessment shall be made publicly available. That summary shall not contain classified information.***

Amendment

2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available ***upon request*** to competent authorities and self-regulatory bodies.

Amendment

3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the

nature and size of those obliged entities.

nature and size of those obliged entities
and the risk of money laundering and terrorist financing and should respect data protection rules.

Amendment 70

Proposal for a directive Article 8 – paragraph 4 – point a

Text proposed by the Commission

(a) the development of internal policies, procedures and controls, including customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening;

Amendment

(a) the development of internal policies, procedures and controls, including ***model risk management practices***, customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening. ***Those measures shall not allow the obliged entities to ask consumers to provide more personal data than necessary;***

Amendment 71

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

1. In order to develop a common approach and common policies against non-cooperative jurisdictions with deficiencies in the field of combating money laundering, Member States shall periodically endorse and adopt the lists of countries published by the FATF.

2. The Commission shall coordinate preparatory work at the European level on the identification of third countries with grave strategic deficiencies in their money laundering systems that pose significant risks to the financial system of the Union, taking into account the criteria

set out in paragraph 3 of Annex III.

3. The Commission shall be empowered to adopt delegated acts in order to establish a list of countries as defined in paragraph 2.

4. The Commission shall monitor on a regular basis the evolution of the situation in the countries defined in paragraph 2 on the basis of criteria set out in paragraph 3 of Annex III and, where appropriate, shall review the list referred to in paragraph 3 of this Article.

Amendment 72

Proposal for a directive Article 9

Text proposed by the Commission

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts *or* anonymous *passbooks*. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous *passbooks* be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.

Amendment

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts, *anonymous passbooks or from issuing anonymous electronic payment cards which do not fulfil the conditions listed in Article 10a*. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts, *anonymous passbooks* or anonymous *payment cards* be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.

Amendment 73

Proposal for a directive Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) for *providers of gambling services*, when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

Amendment

(d) for *casinos*, when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(da) for on-line gambling when establishing the business relationship;

(db) for other providers of gambling services, when paying out winnings of EUR 2 000 or more;

Amendment 74

Proposal for a directive Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) whenever a company is established.

Amendment 75

Proposal for a directive Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Member States may, on the basis of proven low risk, apply exemptions to obliged entities from customer due diligence with respect to electronic money as defined in Article 2(2) of Directive 2009/110/EC, if the following conditions are fulfilled:

(a) the payment instrument is not reloadable;

(b) the maximum amount stored electronically does not exceed EUR 250; Member States may increase this limit up to EUR 500 for payment instruments that can only be used in that one particular Member State;

(c) the payment instrument is used exclusively to purchase goods or services;

(d) the payment instrument cannot be funded with electronic money;

(e) redemption in cash and cash withdrawal are forbidden unless identification and verification of the identity of the holder, adequate and appropriate policies and procedures on

redemption in cash and cash withdrawal, and record keeping obligations are performed.

2. Member States shall ensure that customer due diligence measures are always applied before redemption of the monetary value of the electronic money exceeding EUR 250.

3. This Article shall not prevent Member States from allowing obliged entities to apply simplified customer due diligence measures in respect of electronic money in accordance with Article 13 of this Directive if the conditions provided for in this Article are not fulfilled.

Amendment 76

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. 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 the beneficial owner *and* taking reasonable 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 *reasonable* measures to understand the ownership and control structure of the customer;
 - (c) assessing and, as appropriate, obtaining information on the purpose and intended

Amendment

1. 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) *in addition to the identification of* the beneficial owner *listed in a register pursuant to Article 29*, taking reasonable 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, *foundations, mutuals, holdings* and *all other similar existing or future* legal arrangements, taking *all necessary* measures to understand the ownership and control structure of the customer, assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;
 - (c) assessing and, as appropriate, obtaining information on the purpose and intended

nature of the business relationship;

(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.

Amendment 77

Proposal for a directive Article 11 – paragraph 1 a (new)

Text proposed by the Commission

nature of the business relationship;

(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 the source of funds and ensuring that the documents, data or information held are kept up-to-date.

Amendment

1a. When performing the measures in points (a) and (b) of paragraph 1, obliged entities shall also be required to verify that any person purporting to act on behalf of the customer is so authorised to do so and shall be required to identify and verify the identity of that person.

Amendment 78

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

2. 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 not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be completed as soon as practicable after the initial contact.

Amendment

2. 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 ***or during the execution of the transaction for entities subject to the obligations referred to in Article 2(1) and, in any event, at the time when any winnings are paid out***, if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be

completed as soon as practicable after the initial contact.

Amendment 79

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that obliged entities carry out sufficient monitoring of the **transaction** or business **relationship** to enable the detection of unusual or suspicious transactions.

Amendment

3. Member States shall ensure that obliged entities carry out sufficient monitoring of the **transactions** or business **relationships** to enable the detection of unusual or suspicious transactions.

Amendment 80

Proposal for a directive Article 14

Text proposed by the Commission

When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors **of** potentially lower risk situations set out in Annex II.

Amendment

When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors **relating to customer and product, service, transaction or delivery channel as** potentially lower risk situations set out in Annex II.

Amendment 81

Proposal for a directive Article 15

Text proposed by the Commission

EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken

Amendment

EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken

into consideration and/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within **2 years** of the date of entry into force of this Directive.

into consideration and/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within **one year** of the date of entry into force of this Directive.

Amendment 82

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. Member States shall require obliged entities to examine, ***as far as reasonably possible***, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.

Amendment

2. Member States shall require obliged entities to examine the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose, ***or which constitute tax offences within the meaning of Article 3(4)(f)***. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious. ***Where an obliged entity determines such unusual or suspicious transaction or activity, it shall, without delay, inform the FIUs of all Member States that might be concerned.***

Amendment 83

Proposal for a directive Article 16 – paragraph 3

Text proposed by the Commission

3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors ***of*** potentially higher-risk situations set out in Annex III.

Amendment

3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors ***relating to customer and product, service, transaction or delivery channel as*** potentially higher-risk situations set out in

Amendment 84

Proposal for a directive Article 16 – paragraph 4

Text proposed by the Commission

4. EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 on the risk factors to be taken into consideration and/or the measures to be taken in situations where enhanced due diligence measures need to be applied. Those guidelines shall be issued within **2 years** of the date of entry into force of this Directive.

Amendment

4. EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 on the risk factors to be taken into consideration and/or the measures to be taken in situations where enhanced due diligence measures need to be applied. Those guidelines shall be issued within **one year** of the date of entry into force of this Directive.

Amendment 85

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

The Commission, in cooperation with Member States and international organisations, shall draw a list of domestic politically exposed persons and persons who are residents of the Member States, who are or have been entrusted with a prominent function by an international organisation. The list shall be accessible by competent authorities and by obliged entities.

The Commission shall notify the persons concerned that they have been placed on or removed from the list.

The requirements in this Article shall not exempt obliged entities from their customer due diligence obligations, and

obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.

Member States shall take all appropriate measures to prevent the trade of information on politically exposed persons for commercial purposes.

Amendment 86

Proposal for a directive Article 20 – introductory part

Text proposed by the Commission

Obligated entities shall take reasonable measures to determine whether the beneficiaries of a life or other investment related insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken at the latest at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:

Amendment

Obligated entities shall take reasonable measures, ***in accordance with the risk-based approach***, to determine whether the beneficiaries of a life or other investment related insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken at the latest at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:

Justification

Reasonable measures should refer to the application of the risk-based approach, as recommended by the FATF.

Amendment 87

Proposal for a directive Article 21

Text proposed by the Commission

The measures referred to in Articles 18, 19 and 20 shall also apply to family members or persons ***known to be*** close associates of such politically exposed persons.

Amendment

The measures referred to in Articles 18, 19 and 20 ***with the exception of Article 19a*** shall also apply to family members or persons ***who, as indicated by evidence, are*** close associates of such politically exposed persons.

Amendment 88

Proposal for a directive

Article 22

Text proposed by the Commission

Where a person referred to in Articles 18, 19 and 20 has ceased to be entrusted with a prominent public function by a Member State or a third country or with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. This period of time shall not be less than **18** months.

Amendment

Where a person referred to in Articles 18, 19 and 20 has ceased to be entrusted with a prominent public function by a Member State or a third country or with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. This period of time shall not be less than **12** months.

Amendment 89

Proposal for a directive

Article 24

Text proposed by the Commission

Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party.

Amendment

Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party. ***In addition, Member States shall ensure that any such third parties may also be held liable for breaches of national provisions adopted pursuant to this Directive.***

Amendment 90

Proposal for a directive

Article 25

Text proposed by the Commission

1. For the purposes of this Section, "third parties" shall mean obliged entities who are listed in Article 2, or other institutions and persons situated in Member States or a

Amendment

1. For the purposes of this Section, "third parties" shall mean **(a)** obliged entities who are listed in Article 2, **and (b)** other institutions and persons situated in Member

third country, who apply customer due diligence requirements and record keeping requirements equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter VI.

2. The **Member States** shall consider information available on the level of geographical risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform **each other**, **the Commission** and EBA, EIOPA and ESMA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such conditions.

States or a third country, who apply customer due diligence requirements and record keeping requirements equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter VI.

2. The **Commission** shall consider information available on the level of geographical risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform **the Member States**, the **obliged entities** and EBA, EIOPA and ESMA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such conditions.

2a. The Commission shall provide a list of jurisdictions having anti-money laundering measures equivalent to provisions of this Directive and other related rules and regulations of the Union.

2b. The list referred to in paragraph 2a shall be regularly reviewed and updated according to the information received from Member States pursuant to paragraph 2.

Amendment 91

Proposal for a directive

Article 27 – paragraph 1 – point c

Text proposed by the Commission

(c) the effective implementation of requirements referred to in point (b) is supervised at group level by a competent authority.

Amendment

(c) the effective implementation of requirements referred to in point (b) is supervised at group level by a **home** competent authority **in cooperation with host competent authorities**.

Amendment 92

Proposal for a directive Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. EBA, EIOPA and ESMA shall issue guidelines on the implementation of the supervisory regime by the competent authorities in the relevant Member States for group entities to ensure coherent and effective group level supervision. Those guidelines shall be issued within one year of the date of entry into force of this Directive.

Amendment 93

Proposal for a directive Article 29

Text proposed by the Commission

Amendment

1. Member States shall ensure that ***corporate or*** legal entities established within their territory obtain ***and hold*** adequate, accurate ***and*** current information on their beneficial ownership.

1. Member States shall ensure that ***companies and other entities having legal personality, including trusts or entities with a similar structure or function to trusts, foundations, holdings and all other similar, in terms of structure or function, existing or future legal arrangements established or incorporated*** within their territory, ***or governed under their law*** obtain, ***hold and transmit to a public central register, commercial register or companies register within their territory*** adequate, accurate, current ***and up-to-date*** information on ***them and on*** their beneficial ownership, ***at the moment of establishment as well as any changes thereof.***

1a. The register shall contain the minimum information to clearly identify the company and its beneficial owner, namely the name, number, legal form and status of the entity, proof of incorporation, address of the registered office (and of the principal place of business if different from the registered office), the basic regulatory powers (such

as those contained in the Memorandum and Articles of Association), the list of directors (including their nationality and date of birth) and shareholder/beneficial owner information, such as the names, dates of birth, nationality or jurisdiction of incorporation, contact details, number of shares, categories of shares (including the nature of the associated voting rights) and proportion of shareholding or control, if applicable.

The requirements stipulated in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.

1b. Regarding trusts or other types of legal entities and arrangements, existing or future, with a similar structure or function, the information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust. Member States shall ensure that trustees disclose their status to obliged entities when, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the threshold set out in points (b), (c) and (d) of Article 10. The information held should include the date of birth and nationality of all individuals. Member States shall follow the risk-based approach when publishing the trust deed and letter of wishes and shall ensure where applicable and while respecting the protection of personal information, that information is disclosed to competent authorities, in particular FIUs, and to obliged entities.

2. Member States shall ensure that the information referred to in paragraph 1 of this Article can be accessed in a timely manner by competent authorities and by obliged entities.

2. The information referred to in paragraphs 1, 1a and 1b of this Article shall be accessible by competent authorities, in particular FIUs, and by obliged entities of all Member States in a timely manner. Member States shall make the registers referred to in paragraph 1 of

this Article publicly available following prior identification of the person wishing to access the information through basic online registration. The information shall be available online to all persons in an open and secure data format, in line with data protection rules, in particular as regards the effective protection of the rights of the data subject to access personal data and the rectification or deletion of inaccurate data. The fees charged for obtaining the information shall not exceed the administrative costs thereof. Any changes to the information displayed shall be clearly indicated in the register without delay and at the latest within 30 days.

The company registers referred to in paragraph 1 of this Article shall be interconnected by means of the European platform, the portal and optional access points established by the Member States pursuant to Directive 2012/17/EU. Member States, with the support of the Commission, shall ensure that their registers are interoperable within the system of register networking through the European platform.

2a. The Commission, in cooperation with Member States, shall rapidly, constructively and effectively seek cooperation with third countries to encourage that equivalent central registers containing beneficial ownership information are established and information referred to in paragraphs 1 and 1a of this Article in their countries is made publically accessible.

Priority shall be given to third countries that host a significant number of corporate or legal entities, including trusts, foundations, holdings and all other bodies that are similar in terms of structure or function and that hold shares indicating direct ownership pursuant to Article 3(5) of this Directive in corporate or legal entities established in the Union.

2b. Member States shall lay down the

rules on effective, proportionate and dissuasive penalties for natural or legal persons applicable to infringements of the national provisions adopted pursuant to this Article and shall take all measures necessary to ensure that such penalties are applied. For the purposes of this Article, Member States shall establish effective anti-abuse measures with view to preventing misuse based on bearer shares and bearer share warrants.

2c. The Commission shall submit to the European Parliament and to the Council within three years after the entry into force of this Directive a report on the application and mode of functioning of the requirements pursuant to this Article, if appropriate, accompanied, where appropriate by a legislative proposal.

Amendment 94

Proposal for a directive

Article 30

Text proposed by the Commission

Amendment

Article 30

deleted

1. Member States shall ensure that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust. This information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust.

2. Member States shall ensure that trustees disclose their status to obliged entities when, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the threshold set out in points (b), (c) and (d) of Article 10.

3. Member States shall ensure that the information referred to in paragraph 1 of

this Article can be accessed in a timely manner by competent authorities and by obliged entities.

4. Member States shall ensure that measures corresponding to those in paragraphs 1, 2 and 3 apply to other types of legal entity and arrangement with a similar structure and function to trusts.

Amendment 95

Proposal for a directive Article 31 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The persons referred to in Article 2(1)(3)(a), (b), and (d), shall inform the FIU and / or the appropriate self-regulatory body of the profession concerned, as detailed in Article 33(1), if they suspect, or have reasonable grounds to suspect that their services are being misused for the purpose of criminal activity.

Amendment 96

Proposal for a directive Article 31 – paragraph 3

Text proposed by the Commission

Amendment

3. The FIU shall be established as **a** central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering or associated predicate offences, potential terrorist financing or are required by national legislation or regulation. The FIU shall be provided with adequate resources in order to fulfil its tasks.

3. The FIU shall be established as **an operationally independent and autonomous** central national unit. It shall be responsible for receiving and **analysing suspicious transaction reports and other information relevant to potential money laundering, associated predicate offences or potential terrorist financing. The FIU shall be responsible for disseminating the results of its analysis to all** competent authorities, **when there are grounds to suspect** money laundering or associated predicate offences or terrorist financing. **It shall be able to obtain relevant additional information from obliged entities for the abovementioned purposes.** The FIU shall

be provided with adequate *financial, technical and human* resources in order to fulfil its tasks. ***Member States shall ensure that the FIU is free from undue interference.***

Amendment 97

Proposal for a directive Article 31 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfil its tasks. In addition, FIUs shall respond to requests for information by law enforcement authorities in their Member State unless there are factual reasons to assume that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where divulcation of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested.

Amendment

4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfil its tasks. In addition, FIUs shall respond to requests for information by law enforcement authorities in their Member State unless there are factual reasons to assume that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where divulcation of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested. ***When the FIU receives such a request, the decision to conduct analysis and/or dissemination of information to the requesting law enforcement authority should remain within the FIU. Member States shall require law enforcement authorities to provide feedback to the FIU about the use made of the information provided.***

Amendment 98

Proposal for a directive Article 32 – paragraph 2

Text proposed by the Commission

2. The information referred to in paragraph 1 of this Article shall be forwarded to the FIU of the Member State in whose territory

Amendment

2. The information referred to in paragraph 1 of this Article shall be forwarded to the FIU of the Member State in whose territory

the institution or person forwarding the information is situated. The person or persons designated in accordance with the procedures provided for in Article 8(4) shall forward the information.

the institution or person forwarding the information is situated ***and to the FIU of the Member State where the obliged entity is established***. The person or persons designated in accordance with the procedures provided for in Article 8(4) shall forward the information.

Amendment 99

Proposal for a directive Article 33 – paragraph 1

Text proposed by the Commission

By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), and (d) ***designate an appropriate*** self-regulatory body of the profession concerned ***as*** the authority to receive the information referred to in Article 32(1).

Amendment

By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), (d) ***and (e) and those professions and categories of undertaking referred to in Article 4***, designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).

In all circumstances, Member States shall provide for the means, and manner in which, to achieve the protection of professional secrecy, confidentiality and privacy.

Amendment 100

Proposal for a directive Article 37

Text proposed by the Commission

Member States shall ***take all appropriate measures in order to protect employees*** of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.

Amendment

Member States shall ***ensure that individuals, including employees and representatives*** of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU ***are duly protected*** from being exposed to threats or hostile action, ***adverse treatment and adverse consequences, and in particular from adverse or discriminatory employment actions.*** ***Member States shall guarantee legal aid free of charge for such persons and shall***

provide secure communication channels for persons to report their suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the ESAs or the FIU. Member States shall ensure that there are adequate witness protection programmes.

Amendment 101

Proposal for a directive Article 38 – paragraph 2

Text proposed by the Commission

2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, or disclosure for law enforcement purposes.

Amendment

2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, **data protection authorities** or disclosure for law enforcement purposes.

Amendment 102

Proposal for a directive Article 38 – paragraph 4 – subparagraph 2

Text proposed by the Commission

For the purposes of the first subparagraph, a ‘network’ shall mean the larger structure to which the person belongs and which shares common ownership, management or compliance control.

Amendment

For the purposes of the first subparagraph, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management, **standards, methods** or compliance control.

Amendment 103

Proposal for a directive Article 38 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. For the purposes of this Article, third-country requirements equivalent to those laid down in this Directive shall include data protection rules.

Amendment 104

Proposal for a directive Chapter 5 – title

Text proposed by the Commission

RECORD KEEPING AND
STATISTICAL DATA

Amendment

DATA PROTECTION, RECORD
KEEPING AND STATISTICAL DATA

Amendment 105

Proposal for a directive Article 39

Text proposed by the Commission

Member States shall require obliged entities to store the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:

(a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their customer has ended. Upon expiration of this period, personal data shall be deleted unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum ***retention period after the business relationship has ended shall not exceed ten*** years;

(b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national

Amendment

I. Member States shall require obliged entities to store the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:

(a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their customer has ended ***or after the date of the occasional transaction***. Upon expiration of this period, personal data shall be deleted unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing ***and if the extension of the data retention period is justified on a case by case basis. The maximum extension of the retention period is five additional*** years;

(b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national

legislation for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shortest. Upon expiration of this period, personal data shall be deleted, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period ***following either the carrying-out of the transactions or the end of the business relationship, whichever period ends first, shall not exceed ten*** years.

legislation for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shortest. Upon expiration of this period, personal data shall be deleted, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing ***and if the extension of the data retention period is justified on a case by case basis. The maximum extension of the retention period is five additional*** years.

2. Any personal data retained shall not be used for any purpose other than the purpose for which it has been retained, and under no circumstances shall it be used for commercial purposes.

Amendment 106

Proposal for a directive Article 39 a (new)

Text proposed by the Commission

Amendment

Article 39a

1. With regard to the processing of personal data carried out by Member States within the framework of this Directive, the provisions of Directive 95/46/EC apply. With regard to the processing of personal data by the European supervisory authorities, the provisions of Regulation (EC) No 45/2001 apply. The collection, processing and transfer of information for anti-money laundering purposes shall be considered as a public interest under those legal acts.

2. Personal data shall only be processed on the basis of this Directive for the sole purpose of the prevention of money laundering and terrorist financing.

Obligated entities shall inform new clients of the possible use of the personal data for money laundering prevention purposes before establishing a business relationship. Processing sensitive categories of data shall be done in accordance with Directive 95/46/EC.

3. The processing of data collected on the basis of this Directive for commercial purposes shall be prohibited.

4. The affected person to whom disclosure of information on processing his or her data is denied by an obliged entity or competent authority, shall have the right to request through his or her data protection authority any verifications of, access and corrections to or erasure of his or her personal data, as well as the right to lodge a judicial procedure.

5. Access by the data subject to information contained in a suspicious transaction report shall be prohibited. The prohibition laid down in this paragraph shall not include disclosure to the data protection authorities.

6. Member States shall require the obliged entities and competent authorities to recognise and comply with the effective powers of data protection authorities in accordance with Directive 95/46/EC as regards the security of the processing and accuracy of personal data, either ex officio or based on a complaint of the person concerned.

Amendment 107

Proposal for a directive Article 40

Text proposed by the Commission

Amendment

-1. Member States shall have national centralised mechanisms enabling them to identify, in a timely manner, whether natural or legal persons hold or control bank accounts kept by financial institutions on their territory.

Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship.

Amendment 108

Proposal for a directive Article 40 a (new)

Text proposed by the Commission

-1a. Member States shall also have mechanisms providing the competent authorities with a means of identifying property without giving prior notice to the owner.

1. Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship, ***through secure channels and in a manner that ensures full confidentiality of the enquiries.***

Amendment

Article 40a

The collection, processing and transfer of information for anti-money laundering purposes shall be considered to be a matter of public interest under Directive 95/46/EC.

Amendment 109

Proposal for a directive Article 41 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) data identifying the number and percentage of reports resulting in further investigation, with annual report to obliged institutions detailing the usefulness and follow-up of the reports they presented;

Amendment 110

Proposal for a directive Article 41 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) data regarding the number of cross-border requests for information that were made by the FIU, received by the FIU, declined by the FIU and responded to in full or in part by the FIU.

Amendment 111

Proposal for a directive Article 42 – paragraph 5

Text proposed by the Commission

Amendment

5. EBA, EIOPA and ESMA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to Article 2(1)(1) and (2) where the legislation of the third country does not permit application of the measures required under paragraphs 1 and 2. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission within ***two years*** of the date of entry into force of this Directive.

5. EBA, EIOPA and ESMA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to Article 2(1)(1) and (2) where the legislation of the third country does not permit application of the measures required under paragraphs 1 and 2. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission within ***18 months*** of the date of entry into force of this Directive.

Amendment 112

Proposal for a directive Article 43 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 113

Proposal for a directive

Article 43 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall require that obliged entities appoint the member(s) of the management board who are responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive.

Amendment 114

Proposal for a directive

Article 44 – paragraph 3

Text proposed by the Commission

Amendment

3. In respect of the obliged entities referred to in Article 2(1)(3)(a), (b), (d) **and** (e), Member States shall ensure that competent authorities take the necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities.

3. In respect of the obliged entities referred to in Article 2(a), (b), (d), (e) **and (g)**, Member States shall ensure that competent authorities **and self-regulatory bodies** take the necessary measures to prevent **convicted criminals in the abovementioned areas** or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities.

Amendment 115

Proposal for a directive

Article 45 – paragraph 3

Text proposed by the Commission

Amendment

3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.

3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections. ***Competent authorities in charge of supervising credit and financial institutions shall monitor the adequacy of the legal advice they receive with a view to***

reducing legal and regulatory arbitrage in the case of aggressive tax planning and avoidance.

Amendment 116

Proposal for a directive Article 45 – paragraph 4

Text proposed by the Commission

4. Member States shall **ensure** that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive.

Amendment

4. Member States shall **require** that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive.

Amendment 117

Proposal for a directive Article 45 – paragraph 6 – introductory part

Text proposed by the Commission

6. Member States shall ensure that **competent authorities that apply a risk-sensitive** approach to supervision:

Amendment

6. Member States shall ensure that **when applying a risk-based** approach to supervision, **competent authorities**:

Justification

Member States should ensure implementation of a risk-based approach, and avoid that competent authorities apply a “tick-the-box-approach”.

Amendment 118

Proposal for a directive Article 46

Text proposed by the Commission

Member States shall ensure that policy makers, the FIU, law enforcement authorities, supervisors and other competent authorities involved in anti-money laundering and combating terrorist financing have effective mechanisms to enable them to co-operate and co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and

Amendment

Member States shall ensure that policy makers, the FIU, law enforcement authorities, supervisors, **data protection authorities** and other competent authorities involved in anti-money laundering and combating terrorist financing have effective mechanisms to enable them to co-operate and co-ordinate domestically concerning the development and implementation of policies and activities to

terrorist financing.

combat money laundering and terrorist financing.

Amendment 119

Proposal for a directive Article 47

Text proposed by the Commission

The competent authorities shall provide EBA, EIOPA and ESMA with all the information necessary to carry out their duties under this Directive.

Amendment

Without prejudice to data protection rules, the competent authorities shall provide EBA, EIOPA and ESMA with all the ***relevant*** information necessary to carry out their duties under this Directive.

Amendment 120

Proposal for a directive Article 48

Text proposed by the Commission

The Commission ***may*** lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Union. It ***may*** regularly convene meetings with representatives from Member States' FIUs to facilitate co-operation and to exchange views on co-operation related issues.

Amendment

The Commission ***shall*** lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Union. It ***shall*** regularly convene ***meetings of the EU FIUs' Platform composed of*** representatives from Member States' FIUs ***and, where appropriate, meetings of the EU FIUs' Platform with EBA, EIOPA or ESMA. The EU FIUs' Platform has been set up to formulate guidance on implementation issues relevant for FIUs and reporting entities,*** to facilitate the ***FIUs' activities, particularly those concerning international cooperation and joint analysis, to share information on trends and risk factors in the internal market, and to ensure the participation of the FIUs in the governance of the FIU.net system.***

Amendment 121

Proposal for a directive Article 49

Text proposed by the Commission

Member States shall ensure that their FIUs co-operate with each other to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities.

Amendment

Member States shall ensure that their FIUs co-operate with each other **and with FIUs from non-Member States**, to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities, **without prejudice to Union data protection rules**.

Amendment 122

**Proposal for a directive
Article 50 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that FIUs exchange, **spontaneously** or upon request, any information that may be relevant for the processing or analysis of information or investigation by the FIU regarding financial transactions related to money laundering or terrorist financing and the natural or legal person involved. A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used.

Amendment

1. Member States shall ensure that FIUs exchange **with both Member State FIUs and non-Member State FIUs, automatically** or upon request, any information that may be relevant for the processing or analysis of information or investigation by the FIU regarding financial transactions related to money laundering or terrorist financing and the natural or legal person involved. A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used.

Amendment 123

**Proposal for a directive
Article 50 – paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its powers which it has domestically available for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU **based in the Union**. The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange

Amendment

2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its powers which it has domestically available for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU. The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, wherever

information, wherever possible.

possible.

Amendment 124

Proposal for a directive

Article 50 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In particular, when a FIU based in the Union wants to obtain additional information from an obliged entity of another Member State which operates on its territory, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is situated. This FIU shall transfer requests and answers promptly and without any filter.

Amendment 125

Proposal for a directive

Article 53 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ***encourage*** their FIUs to use protected channels of communication between ***FIUs and to use the decentralised computer network FIU.net.***

1. Member States shall ***require*** their FIUs to use protected channels of communication between ***themselves.***

Amendment 126

Proposal for a directive

Article 53 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs co-operate to apply sophisticated technologies. These technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their proceeds and funds.

2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs co-operate ***among themselves and, within its mandate, with Europol,*** to apply sophisticated technologies. These technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their

proceeds and funds.

Justification

The words 'in cooperation with Europol' should be added in order to fully take into account the agreement between FIUs and Europol to use Europol secure information network SIENA to exchange information.

Amendment 127

**Proposal for a directive
Article 54**

Text proposed by the Commission

Member States shall **ensure that** their FIUs cooperate with Europol regarding analyses carried out having a cross-border dimension concerning at least two Member States.

Amendment

Member States shall **encourage** their FIUs **to** cooperate with Europol regarding analyses **of on-going cases** carried out having a cross-border dimension concerning at least two Member States.

Amendment 128

**Proposal for a directive
Article 54 a (new)**

Text proposed by the Commission

Amendment

Article 54a

The Commission should increase the pressure that it brings to bear on the tax havens to improve their cooperation and exchange of information in order to combat money laundering and terrorist financing.

Amendment 129

**Proposal for a directive
Article 55 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive.

1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. ***The penalties shall be effective, proportionate and dissuasive.***

Amendment 130

Proposal for a directive

Article 56 – paragraph 2 – point a

Text proposed by the Commission

(a) a public statement which indicates the natural or legal person and the nature of the breach;

Amendment

(a) a public statement which indicates the natural or legal person and the nature of the breach, ***if necessary and proportionate after a case-by-case evaluation***;

Amendment 131

Proposal for a directive

Article 56 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the purpose of point (e), where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the ***consolidated*** account of the ***ultimate parent undertaking in the preceding business year***.

Amendment

For the purpose of point (e), where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the account of the ***subsidiary***.

Amendment 132

Proposal for a directive

Article 57 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, ***unless such publication would seriously jeopardise the stability of financial markets***. Where publication would cause a disproportionate damage to the parties involved, competent authorities ***shall*** publish the sanctions on an anonymous basis.

Amendment

1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive, ***if necessary and proportionate after a case by case evaluation***, without undue delay including information on the type and nature of the breach and the identity of persons responsible for it. Where publication would cause a disproportionate damage to the parties involved, competent authorities ***may*** publish the sanctions on an anonymous basis.

Amendment 133

Proposal for a directive Article 57 – paragraph 3

Text proposed by the Commission

3. EBA, EIOPA, and ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). These guidelines shall be issued within **2 years** of the date of entry into force of this Directive.

Amendment

3. ***In order to ensure their consistent application and dissuasive effect across the Union***, EBA, EIOPA, and ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). These guidelines shall be issued within **one year** of the date of entry into force of this Directive.

Amendment 134

Proposal for a directive Article 58 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) appropriate protection for the accused person;

Amendment 135

Proposal for a directive Article 59 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall submit to the European Parliament and to the Council within one year of the entry into force of this Directive a report on the provisions concerning serious tax offences and punishments in the Member States, on the cross-border significance of tax offences and on the possible need for a coordinated approach in the Union, accompanied if appropriate by a legislative proposal.

Amendment 136

Proposal for a directive

Annex II – point 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States, or from third countries provided that they are subject to requirements to combat money laundering or terrorist financing consistent with international standards and are supervised for compliance with those requirements, and provided that the information on the identity of the beneficial owner is available, on request, to the institutions that act as depository institutions for the pooled accounts;

Amendment 137

Proposal for a directive

Annex II – point 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) obliged entities where they are subject to requirements to combat money laundering and terrorist financing under this Directive and have effectively implemented those requirements.

Amendment 138

Proposal for a directive

Annex II – point 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) long-term purpose-orientated savings agreements, serving for instance as a safeguard for retirement provisions or for the acquisition of self-used real estate and where the incoming payments originate from a payment account which is identified in accordance with Articles 11 and 12 of this Directive;

Amendment 139

**Proposal for a directive
Annex II – point 2 – point e b (new)**

Text proposed by the Commission

Amendment

(eb) financial products low in value where repayment is conducted through a bank account in the name of the customer;

Amendment 140

**Proposal for a directive
Annex II – point 2 – point e c (new)**

Text proposed by the Commission

Amendment

(ec) financial products which relate to financial physical assets in the form of leasing agreements or of low value consumer credit, provided the transactions are carried out through bank accounts.

Amendment 141

**Proposal for a directive
Annex II – point 2 – point e d (new)**

Text proposed by the Commission

Amendment

(ed) non-face-to-face business relationships or transactions where the identity is capable of being verified electronically;

Amendment 142

**Proposal for a directive
Annex II – point 2 – point e f (new)**

Text proposed by the Commission

Amendment

(ef) such products, services and transactions identified as low risk by the competent authorities of the home Member State of the obliged entities.

Amendment 143

Proposal for a directive Annex II – point 3 – point a

Text proposed by the Commission

(a) *other* EU Member States;

Amendment

(a) EU Member States;

Amendment 144

Proposal for a directive Annex II – point 3 – point b

Text proposed by the Commission

(b) third countries having effective anti-money laundering/combating terrorist financing systems;

Amendment

(b) third countries *identified, by credible sources, such FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, as* having effective anti-money laundering/combating terrorist financing systems;

Amendment 145

Proposal for a directive Annex II – point 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) jurisdictions identified by the Commission having anti-money laundering measures equivalent to those laid down by this Directive and other related rules and regulations of the Union;

Amendment 146

Proposal for a directive Annex III – point 2 – point b

Text proposed by the Commission

(b) products or transactions that might favour anonymity;

Amendment

(b) products or transactions that might favour *or that allow for* anonymity;

Amendment 147

Proposal for a directive Annex III – point 2 – point c

Text proposed by the Commission

(c) non-face-to-face business relationships or transactions;

Amendment

(c) non-face-to-face business relationships or transactions, ***without certain safeguards, e.g. electronic signatures;***

Amendment 148

Proposal for a directive Annex III – point 2 – point e

Text proposed by the Commission

(e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products.

Amendment

deleted

Amendment 149

Proposal for a directive Annex III – point 3 – point c

Text proposed by the Commission

(c) countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations;

Amendment

(c) countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations ***and the European Union;***

Amendment 150

Proposal for a directive Annex III a (new)

Text proposed by the Commission

Amendment

Annex IIIa

The following are types of enhanced due diligence measures that Member States should as a minimum implement for the application of Article 16:

- Obtaining additional information on the

customer (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner.

- Obtaining additional information on the intended nature of the business relationship;

- Obtaining information on the customer's source of funds or source of wealth of the customer;

- Obtaining information on the reasons for intended or performed transactions;

- Obtaining the approval of senior management to commence or continue the business relationship;

- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;

- Requiring the first payment to be carried out through an account opened in the customer's name with a bank subject to similar CDD standards.