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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council
on the prevention of the use of the financial system for the purpose of money
laundering, including terrorist financing
(COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Hartmut Nassauer

Draftsman (*):

Joseph Muscat, Committee on Economic and Monetary Affairs

(*) Enhanced cooperation between committees - Rule 47 of the Rules of
Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	81
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS(*).....	84
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION.....	114
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS	121
OPINION OF THE COMMITTEE ON PETITIONS	148
PROCEDURE.....	155

(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
(COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0448)¹,
 - having regard to Article 251(2), Article 47(2), first and third sentences, and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0143/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Legal Affairs and the Committee on Petitions (A6-0137/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1

Title

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

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

(As a consequence of this amendment, the following technical changes should be made: "money laundering" should be

¹ Not yet published in OJ.

replaced by "money laundering and terrorist financing" in recitals 10, 11, 21, 25, 26 and articles 4, 10.1(a), 10.1(c), 18, 29 and 37.1 introductory part; "money laundering" should be replaced by "money laundering or terrorist financing" in recitals 13 and 22 and in articles 2.2, 3(10), 6(c), 10.3, 11, 17, 19, 21, 22, 24, 25, 26, 30, 31, 37.1(b) and 37.1(c) ; the "Committee on the Prevention of Money Laundering" should be called "Committee on the Prevention of Money Laundering and Terrorist Financing" in recital 19 and article 38).

Justification

The draftsman considers that money laundering and terrorist financing are of different nature. As a consequence terrorist financing should not be considered as a form of money laundering.

Amendment 2 Citation 3 a (new)

***Having regard to the opinion of the
European Central Bank,***

Justification

The Member States generally consult the European Central Bank on legislative proposals with significant economic implications and they should therefore also do so in the case of this directive.

Amendment 3 Recital 1

(1) Combating money laundering is one of the most effective means of opposing organised crime. In addition to the criminal law approach, a preventive effort via the financial system can also produce results.

(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 also produce results.

Justification

Incorporating terrorism and its financing into the activities to be tackled.

Amendment 4 Recital 2

(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 money for terrorist purposes. In order to avoid Member States' adopting measures to protect their financial systems which could be inconsistent with the functioning of the internal market, Community action in this area is necessary.

(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 avoid Member States' adopting measures to protect their financial systems which could be inconsistent with the functioning of the internal market ***and with the prescriptions of the rule of law and European public policy***, Community action in this area is necessary.

Amendment 5 Recital 3

(3) In order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movements and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level.

(3) In order to facilitate their criminal activities, launderers ***and terrorist financiers*** could try to take advantage of the freedom of capital movements and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level.

Justification

The criminal offence of money laundering involves covering up illegally acquired assets. It therefore necessarily presupposes a prior criminal offence. The offence of terrorist financing also includes the use of legally acquired assets to support terrorism financially. Consequently, terrorist financing cannot be legally described as a sub-category of money laundering but has to be a separate and independent offence placed on the same footing as money laundering. In this report a clear distinction has therefore been made between money laundering on the one hand and terrorist financing on the other.

Amendment 6
Recital 4

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

(4) In order to respond to these concerns **in the area 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 laundering was adopted. It required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.

Justification

Despite every willingness in principle to tackle money laundering and terrorist financing, those concerned have reservations that not enough experience has yet been gained from the second money laundering directive. A thorough assessment of money laundering legislation and its impact in practice is still urgently required as called for here.

Amendment 7
Recital 5

(5) Money laundering **is usually** carried out in an international context **so that the criminal origin of the funds can be better disguised**. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the **Forty** Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the “FATF”), which constitutes the foremost international body active in the fight

(5) Money laundering **and terrorist financing are frequently** carried out in an international context. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the “FATF”), which constitutes the foremost international body active in the fight against money laundering and terrorist

against money laundering and terrorist financing. Since the FATF **Forty** Recommendations were substantially revised and expanded in 2003, the Community Directive should be brought into line with this new international standard.

financing. Since the FATF Forty Recommendations were substantially revised and expanded in 2003, the Community Directive should be brought into line with this new international standard.

Justification

Distinction between money laundering and terrorist financing, see justification for Amendment 5.

Amendment 8 Recital 8

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

(8) 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 the Directive*** should be ***expanded*** to cover not only the manipulation of money derived from crime but also the collection of money or property for terrorist purposes.

Amendment 9 Recital 8a

(8a) The general obligation to adopt effective, proportionate and dissuasive sanctions, combined with the criminalisation obligation of Article 1, means that criminal sanctions should apply to natural persons who infringe obligations on customer identification, record-keeping and reporting of suspicious transactions for

Deleted

the purpose of money laundering, since such persons have to be regarded as participating in the money laundering activity.

Amendment 10
Recital 9

(9) Directive 91/308/EEC, though imposing a customer identification obligation, contained relatively little detail on the relevant procedures. In view of the crucial importance of this aspect of anti-**money laundering prevention**, it is appropriate, in accordance with the new international standards, to introduce more specific and detailed provisions relating to the identification and verification of the customer and of any beneficial owner. To that end a precise definition of the “beneficial owner” is essential.

(9) Directive 91/308/EEC, though imposing a customer identification obligation, contained relatively little detail on the relevant procedures. In view of the crucial importance of this aspect of **money laundering and terrorist financing** prevention, it is appropriate, in accordance with the new international standards, to introduce more specific and detailed provisions relating to the identification and verification of the customer and of any beneficial owner. To that end a precise definition of the “beneficial owner” is essential. ***In those cases where the individual beneficiaries of a legal entity or arrangement such as a foundation or trust are yet to be determined, and it is therefore impossible to identify an individual as the beneficial owner, it would suffice to identify the 'class of persons' who are intended to be the beneficiaries of the foundation or trust. This requirement does not include the identification of the individuals within that class of persons.***

Justification

This amendment extends the identification requirement to groups of people who are the beneficiaries of a foundation, in so far as an individual beneficiary has not yet been identified.

Amendment 11
Recital 10

(10) ***The mere prohibition of money laundering is not sufficient and it is necessary to foresee criminal law sanctions in order to ensure that money laundering, including terrorist financing,***

(10) ***To the extent that the providers of the property of a legal entity or arrangement have a significant control over the use of the property they should be identified as a beneficial owner.***

is effectively prevented. Therefore, money laundering should be made a criminal offence under Community legislation.

Justification

Pointer as to who should be understood as a beneficial owner, for instance in the case of foundations or trusts, irrespective of their shareholdings.

Amendment 12
Recital 10 a (new)

(10a) Trust relationships are widely used in commercial products as an internationally recognised feature of the comprehensively supervised wholesale financial markets; an obligation to identify the beneficial owner does not arise from the fact alone that there is a trust relationship in this particular case.

Justification

A trust is a relationship that appears in a huge variety of commercial transactions, in particular within the highly complex and tightly supervised EU financial markets. In many wholesale financial markets products the trust relationship is merely an incidental part of the structure. The clarification in the recital preserves the soundness of the legal framework that underpins the competitiveness and ability to innovate in the EU financial markets, without compromising the purpose of the directive which is to prevent the establishment of specific legal arrangements, including trusts, to launder money by hiding the beneficial owners.

Amendment 13
Recital 10 b (new)

(10b) The provisions as laid down in this Directive should also apply if the activities of the institutions and persons covered by this Directive are performed on the Internet.

Justification

This amendment seeks to bring financial transactions via the Internet within the scope of the directive.

Amendment 14
Recital 11

(11) As the tightening of controls in the financial sector has prompted money launderers to seek alternative methods for concealing the origin of the proceeds of crime, the anti-money laundering obligations should be extended to life insurance intermediaries and trust and company service providers.

(11) As the tightening of controls in the financial sector has prompted money launderers **and terrorist financiers** to seek alternative methods for concealing the origin of the proceeds of crime **and as such channels can be used to finance terrorism**, the anti-money laundering **and anti-terrorist financing** obligations should be extended to life insurance intermediaries and trust and company service providers.

Justification

Allows measures to combat money laundering and terrorist financing to be extended to life insurance intermediaries and trust and company service providers.

Amendment 15
Recital 11 a (new)

(11a) The coverage of insurance intermediaries under the scope of this Directive does not include those entities that fall under the legal responsibility of an insurance undertaking and are therefore already covered by the Directive.

Justification

Makes a distinction between the liability of independent insurance intermediaries and the responsible officers of insurance undertakings.

Amendment 16
Recital 11 b (new)

(11b) Acting as a company director or secretary does not of itself make someone a trust and company service provider, the scope of the definition only covers those persons that act as a company director or secretary for a third party and by way of business.

Justification

Confines the scope of the Directive to officers of a legal entity who are acting for business purposes.

Amendment 17

Recital 11 c (new)

(11c) The use of large cash transactions has repeatedly proven to be very vulnerable to money laundering and terrorist financing. Therefore in those Member States that allow cash payments above the established threshold all natural or legal persons trading in goods by way of business when accepting such cash payments should come within the scope of the Directive. Dealers in high-value goods, such as precious stones or metals, or works of art, and auctioneers are in any case covered by the Directive to the extent that payments to them are made in cash in an amount of EUR 15 000 or more. To ensure an effective monitoring of the compliance with the provisions of this Directive by this potentially wide group of persons and institutions, Member States can focus their monitoring activities in particular on those natural and legal persons that are exposed to a relatively high risk of money laundering or terrorist financing, in accordance with the principle of risk-based supervision. With a view to the different situations in the different Member States, Member States may decide to adopt stricter provisions, as reflected in Article 4 of the Directive, in order to properly address the risk involved with large cash payments.

Justification

Inserts a reference to the particular risk of money laundering involved in cash transactions.

Amendment 18
Recital 12

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

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

Justification

Identification of terrorist financing as a specific offence, see Amendment 5. The new clause also refers to the need to review operation of the money laundering legislation before any new legislation is introduced.

Amendment 19
Recital 13

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

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

provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes.

the legal advice is provided for money laundering **or terrorist financing** purposes, or the lawyer knows that the client is seeking legal advice for money laundering **or terrorist financing** purposes.

Justification

Identification of terrorist financing as a specific offence, see Amendment 5. Legal privilege is made obligatory rather than merely optional.

Amendment 20 Recital 15 a (new)

(15a) The derogation concerning the identification of beneficial owners of pooled accounts held by notaries or other independent legal professionals is without prejudice to the obligations that these notaries or other independent legal professionals have according to this Directive. This includes the need for such notaries or other independent legal professionals themselves to identify the owners of the pooled accounts held by them.

Justification

Reference to simplified customer due diligence for legal advisory professions in respect of pooled accounts held by them.

Amendment 21 Recital 17

(17) Whereas this is particularly true of business relations with individuals holding, or having held, important public positions, particularly those coming from countries where corruption is widespread; such relations may expose the financial sector in particular to significant reputational and/or legal risks. Enhanced attention **to such cases** is also justified by the international effort to combat corruption.

(17) Whereas this is particularly true of business relations with individuals holding, or having held, important public positions, particularly those coming from countries where corruption is widespread; such relations may expose the financial sector in particular to significant reputational and/or legal risks. Enhanced attention **and greater due diligence in the case of politically exposed persons** is also justified by the international effort to combat corruption.

Justification

Reference to the greater customer due diligence applying to politically exposed persons.

Amendment 22
Recital 18

<i>(18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.</i>	<i>Deleted</i>
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Justification

Deleted because of changed comitology arrangements.

Amendment 23
Recital 19

<i>(19) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of the above Council Decision, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision. To that end a new Committee on the Prevention of Money Laundering, replacing the Money Laundering Contact Committee set up by Directive 91/308/EEC, should be established.</i>	<i>Deleted</i>
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Justification

See justification for Amendment 20.

Amendment 24
Recital 20

(20) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in ***international*** business, it is appropriate, subject to suitable safeguards, to allow customers to be

(20) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers to be introduced whose

introduced whose identification has been carried out elsewhere.

identification has been carried out elsewhere. *In those cases where a person or institution relies on a third party the ultimate responsibility for the customer due diligence procedure remains with the institution to whom the customer is introduced. The third party, or introducer, also retains his own responsibility for all the requirements in the Directive to the extent that he has a relationship with the customer that is covered by the Directive, including the requirement to report suspicious transactions and maintain records.*

Justification

Customer due diligence when third parties are involved.

Amendment 25 Recital 20 a (new)

(20a) In case of agency or outsourcing relations on a contractual basis between institutions or persons covered by this Directive and external natural or legal persons not covered by the scope of the Directive, any anti-money laundering and anti-terrorist financing obligations for these agents or outsourcing providers as part of the institutions or persons subject to the Directive, may only arise from contract and not from this Directive. The responsibility for complying with this Directive remains with the institution or person covered by it.

Amendment 26 Recital 21

(21) ***Reports of*** suspicious transactions should be reported to the ***authorities responsible for combating money laundering. Such authorities are now generally referred to as financial intelligence units and this terminology should also be used in this Directive. All***

(21) Suspicious transactions should be reported to the ***financial intelligence unit, which serves as the national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or***

Member States should have a financial intelligence unit and it should be made clear that attempted money laundering is also to be reported.

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 financial intelligence units allowing them properly to conduct their business, including international cooperation with other financial intelligence units. The institutions and persons covered by the Directive also have to furnish the financial intelligence unit, at its request, with all other necessary information, but it is up to the Member States to determine if the financial intelligence unit or another competent law enforcement authority is empowered to request these information.

Justification

Clarification in respect of specific reporting structures in the Member States. In particular, reporting arrangements through a public prosecutor should remain intact.

Amendment 27

Recital 21 a (new)

(21a) As a derogation from the general prohibition to carry out suspected transactions, the entities subject to this Directive may execute suspected transactions before informing the competent authorities where refraining from the execution is impossible or likely to frustrate the efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, is without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations and those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.

Justification

Safeguards ongoing investigations but leaves international obligations, for instance the freezing of accounts, intact.

Amendment 28

Recital 22

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

(22) There have been a number of cases of employees who report their suspicions of money laundering being subjected to threats or harassment. 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 harassment.

Justification

Inserts terrorist financing as an offence in its own right, see justification for Amendment 5.

Amendment 29

Recital 22 a (new)

(22a) Disclosure of information as referred to in Article 25 should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data¹. Moreover, the provisions in Article 25 cannot interfere with national data protection and professional secrecy legislation.

¹ OJ L 281, 23.11.1995, p. 31.

Justification

Basically makes compliance with the reporting requirements subject to the provisions of the data protection directive. The amendment also stipulates that national data protection and professional secrecy legislation takes precedence over the reporting requirements under Article 25.

Amendment 30 Recital 22 b (new)

(22b) Persons who merely convert paper documents into electronic data and are acting under contract to a credit institution or a financial institution do not fall within the scope of this Directive, likewise any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement system.

Amendment 31 Recital 24

(24) It is important that credit and financial institutions should be able to respond rapidly to requests for information ***from the authorities*** on whether they maintain ***business relations*** with named persons.

(24) It is important that credit and financial institutions should be able to respond rapidly to requests for information on whether they maintain ***business relationships*** with named persons. ***For the purpose of identifying such business relationships in order to be able to provide that information quickly, credit and financial institutions should have effective systems in place which are commensurate with the size and nature of the business. In particular for credit institutions and larger financial institutions it would be appropriate to have electronic systems at their disposal. This provision is of particular importance in the context of procedures leading to measures such as freezing or seizing of assets (including terrorist assets), pursuant to applicable national or EU legislation with a view to combating terrorism.***

Justification

Sets out in greater detail the requirements relating to financial services and information systems providers to allow rapid responses to inquiries about business relationships.

Amendment 32

Recital 24 a (new)

(24a) This Directive establishes detailed rules for customer due diligence, including enhanced customer due diligence for high-risk customers or business relationships such as appropriate procedures to determine whether a person is a politically exposed person, as well as certain additional more detailed requirements, such as the existence of compliance management procedures and policies. All of these requirements will have to be met by each of the institutions and persons under this Directive, while Member States are expected to tailor the detailed implementation of these provisions to the particularities of the various professions and to the differences in scale and size of the institutions and persons covered by this Directive.

Justification

Basic description of the customer due diligence requirement. The appropriateness of the investigation procedure in the case of politically exposed persons has to be measured in terms of the risk involved.

Amendment 33

Recital 25

(25) In order to maintain the mobilisation of the institutions and others subject to Community legislation in this area, feedback should, where practicable, be made available to them on the usefulness and follow-up of the reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering, Member States should keep and improve the relevant

(25) In order to maintain the mobilisation of the institutions and others subject to Community legislation in this area, feedback should, where practicable, be made available to them on the usefulness and follow-up of the 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

statistics.

improve the relevant statistics.

Justification

Inserts terrorist financing as an offence in its own right, see justification for Amendment 5.

Amendment 34

Recital 25 a (new)

(25a) When registering or licensing a currency exchange office, a trust and company service provider or a casino nationally, competent authorities should ensure that the persons who effectively direct or will direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should be established nationally, in conformity with national law. At a minimum such criteria should reflect the need to protect such institutions and persons from being misused by their managers or beneficial owners for criminal purposes.

Justification

Proof of suitability is required for licensing certain types of financial institution. It is left to the Member States to decide how this should be defined, the aim being to stop criminal activities.

Amendment 35

Recital 25 b (new)

(25b) Taking into account the international character of money laundering and terrorist financing, coordination and cooperation between financial intelligence units as mentioned in Council Decision 2000/642/JHA, including the establishment of an EU FIU-net, should be encouraged to the widest possible range. To that end, the Commission should lend such assistance as may be needed to facilitate such coordination, including financial

assistance.

¹*Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (OJ L 271, 24.10.2000, p. 4).*

Justification

Requires the Commission to support cooperation between financial intelligence units, including financially if appropriate.

Amendment 36
Recital 26

(26) The importance of the combat against money laundering must 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. Since legal persons are often involved in complex money laundering operations, such sanctions should also be adjusted in line with the activity carried on by legal persons.

(26) The importance of the combat against money laundering ***or terrorist financing*** must 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. ***Sanctions should be provided for natural and legal persons.*** Since legal persons are often involved in complex money laundering operations, such sanctions should also be adjusted in line with the activity carried on by legal persons.

Justification

The added sentence is a compensation for the deletion of Recital 8a.

Amendment 37
Recital 26 a (new)

(26a) Natural persons exercising any of the activities mentioned in Article 2(1)(3)(a) and (b) within the structure of a legal person, but on an independent basis, shall remain independently responsible for the compliance with the provisions of this Directive, with the exception of the provisions laid down in Article 31.

Justification

Lawyers employed on a salaried basis are exempted from the ongoing training requirements under Article 31 as it is up to their employer to satisfy this requirement.

Amendment 38

Recital 29

(29) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

Deleted

Justification

Recital 29 has been deleted and reinstated as Recital 29b (new).

Amendment 39

Recital 29 a (new)

(29a) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European Parliament and the Council; the need to ensure that competent authorities will be able to ensure compliance with the rules consistently; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to respect the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive basis approach; the need to ensure coherence with other EU legislation in this area; the need to protect the EU, its Member States and their citizens from the consequences of money laundering and terrorist financing.

Justification

This recital sets out the principles applying to the comitology procedure.

Amendment 40
Recital 29 b (new)

(29b) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights,

Justification

This recital incorporates the old recital 29. It is also spelt out more clearly that the European Human Rights Convention takes precedence.

Amendment 41
Article 1, paragraph 1

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

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

Justification

Terrorist financing has to be defined as an offence in its own right for purely legal reasons, see justification for Amendment 5.

Amendment 42
Article 1, paragraph 2, subparagraph 1, point (d)

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

Deleted

Justification

As terrorist financing is offence in its own right, the definition of terrorist financing should be deleted here and reinstated in Article 1, paragraph 2 a (new).

Amendment 43
Article 1, paragraph 2, subparagraph 1, point (e)

(e) participation in, association ***with or conspiracy*** to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing ***indents***.

(e) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing ***points***.

Justification

Technical drafting change with no effect on the substance.

Amendment 44
Article 1, paragraph 2, subparagraph 2

Knowledge, intent or purpose required as an element of the activities referred to in the first subparagraph may be inferred from objective factual circumstances.

Deleted

Justification

Has been reinstated as Article 1, paragraph 4 (new).

Amendment 45
Article 1, paragraph 2 a (new)

2a. For the purposes of this Directive, “terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA.

Justification

Legal definition of the offence of terrorist financing with a reference to the list of offences in the relevant framework decision.

Amendment 46
Article 1, paragraph 2 b (new)

2b. Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs 2 and 2a may be inferred from objective factual circumstances.

Justification

The subjective elements must also cover the offence of terrorist funding.

Amendment 47
Article 2, paragraph 1, point (3), point (d)

(d) insurance intermediaries, when they act in respect of life insurance and other investment related insurance; ***Deleted***

Justification

In so far as insurance intermediaries merely put their clients in touch with policy providers, the ensuing contractual relations are solely between the insurance undertakings and the client. Insurance undertakings are already subject to the provisions of the money laundering directive. Independent insurance intermediaries are covered by the definition of 'financial institution' in Article 2, paragraph 2.

Amendment 48
Article 2, paragraph 1, point (3), point (f)

(f) other persons trading in goods or providing services, whenever payment is made in cash and in an amount of EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(f) other **natural or legal** persons trading in goods, **only to the extent that payments are** made in cash in an amount of EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

Justification

Includes legal persons.

Amendment 49
Article 2, paragraph 2

2. Member States may decide **not to apply this Directive in the case of financial**

2. Member States may decide **that legal and natural persons who** engage in a financial

institutions which engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering occurring.

activity on an occasional or very limited basis and where there is little risk of money laundering ***or terrorist financing*** occurring ***do not fall within the scope of Article 3(1) or (2).***

Justification

Clarification of Nassauer's original Amendment 45, which was also wrongly translated in the English version.

Amendment 50

Article 3, point (2), point (d a) (new)

(da) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council, with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;

Justification

Insurance intermediaries fall within the scope of the Directive insofar as they are acting independently and not merely facilitating the conclusion of a contract between an insurance undertaking and a client.

Amendment 51

Article 3, point (2), point (e)

(e) branches of the institutions referred to in points (a) to (d) when located in the Community of financial institutions whose head offices are inside or outside the Community;

(e) branches of the institutions referred to in points (a) to (da) when located in the Community of financial institutions whose head offices are inside or outside the Community;

Amendment 52

Article 3, point (3)

(3) "insurance intermediary" means an insurance intermediary as defined in Article 2(3) of Directive 2002/92/EC of the European Parliament and of the Council;

Deleted

Justification

These insurance intermediaries have been included in the definition of 'financial institution', see Article 3, paragraph 2, letter (da) (new).

Amendment 53
Article 3, point (4)

**(4) “terrorism” means any of the offences Deleted
within the meaning of Articles 1 to 4 of
Council Framework Decision
2002/475/JHA;**

Justification

Terrorist financing is now an offence in its own right, see Article 1, paragraph 2a (new).

Amendment 54
Article 3, point (7), point (a)

**(a) terrorism; (a) acts as defined in Articles 1 to 4 of
Council Framework Decision
2002/475/JHA;**

Justification

In accordance with the legal definition of terrorist financing in Article 1, paragraph 2a (new), the term terrorism applies to a list of criminal offences set out in the Framework Decision.

Amendment 55
Article 3, point (8), introductory part

(8) ‘beneficial owner’ means (8) ‘beneficial owner’ means *the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:*

Justification

The ultimate owner of a legal entity or the person who ultimately controls it and to whom the provision applies is the person that has a majority of the shares, i.e. 50% or more. The possibility of exercising influence over a legal entity in fact starts when the shareholding is sufficient to exercise a blocking minority, which can therefore influence the memorandum and

articles of association and other structures and measures. Below this threshold is not possible to have a decisive economic influence. A sensible compromise therefore seems to be a shareholding of 25%.

Amendment 56
Article 3, point 8, point (a)

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

(a) **for 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 person, including through bearer share holdings**, other than a company listed on **a regulated market** that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; **a percentage of 25% plus one share or one voting right shall be deemed sufficient to meet this criterion;**

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

Amendment 57
Article 3, point 8, point (b)

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

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

requirements consistent with Community legislation or subject to equivalent international standards;

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

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

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

Amendment 58
Article 3, point (8), point (c)

(c) the natural persons on whose behalf a transaction or activity is being conducted;

Deleted

Justification

This case is already covered by the definition of the term 'beneficial owner' in Article 3, paragraph 8, introduction.

Amendment 59
Article 3, point (9), point (c)

(c) providing a registered office; business address *or accommodation*, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(c) providing a registered office; business address, correspondence or administrative address *and other related services* for a company, a partnership or any other legal person or arrangement;

Justification

Broader wording.

Amendment 60
Article 3, point 9, point (e)

(e) acting as or arranging for another person

(e) acting as or arranging for another person

to act as a nominee shareholder for another person;

to act as a nominee shareholder for another person *other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards*;

Amendment 61
Article 3, point 10

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

(10) “politically exposed persons” means natural persons who are or have been entrusted with prominent public functions and *immediate* family members or *persons known to be* close associates of such persons;

Amendment 62
Article 3, point 11

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

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

Justification

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

Amendment 63
Article 3, point (12)

(12) “Shell bank” means a credit institution incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated

(12) “Shell bank” means a credit institution, *or an institution engaged in equivalent activities*, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and

financial group.

management, and which is unaffiliated with a regulated financial group.

Justification

New legal definition for shell bank.

Amendment 64
Article 3 a (new)

Article 3a

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 institutions and persons referred to in Article 2(1), which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.

In those cases a Member State decides to extend the provisions of this Directive to professions and to categories of undertakings other than those mentioned in Article 2(1), it shall inform the Commission of such a decision.

Justification

This clause allows Member States to include categories of professions and undertakings that are not covered by the legal definition given in Article 2, paragraph 1, but nonetheless carry out activities involving a risk of money laundering.

Amendment 65
Article 4

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

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.***

Justification

Includes terrorist financing as an offence in its own right.

Amendment 66

Article 5

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts, anonymous passbooks *or accounts in fictitious names.*

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts *or* anonymous passbooks. *By way of derogation from Article 8(3), Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks shall be submitted to customer due diligence requirements as soon as possible and in any case before the accounts or passbooks are used in any way.*

Amendment 67

Article 6, introductory part

The institutions and persons covered by this Directive shall apply customer due diligence procedures *on the basis of reliable independent source documents, data or information* in the following cases:

The institutions and persons covered by this Directive shall apply customer due diligence procedures in the following cases:

Justification

Basic provision governing the key customer due diligence obligation imposed on all institutions and persons coming under this Directive. In accordance with a risk-based approach, the reliable independent source documents specified by the Commission are rarely available, particularly in the case of legal entities, and would be impossible to obtain or could be obtained only at disproportionate expense. Consequently, it should be left up to those concerned to determine how they comply with their customer due diligence obligation. Detailed provisions must in any case be left to the Member States, which can include them in the publication obligations they impose on legal entities.

Amendment 68

Article 6, point (c)

(c) when there is a suspicion of money laundering, regardless of any derogation, exemption or threshold;

(c) when there is a suspicion of money laundering *or terrorist financing*, regardless of any derogation, exemption or threshold;

Justification

Includes terrorist financing as an offence in its own right.

Amendment 69

Article 7, paragraph 1, point (a)

(a) identifying the customer and verifying the customer's identity;

(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;***

Amendment 70

Article 7, paragraph 1, point (b)

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

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

Amendment 71

Article 7, paragraph 1, point (b a) (new)

(ba) In the absence of a record of owners or a legal obligation to declare beneficial ownership, this duty shall be regarded as discharged when publicly available sources of information have been consulted, reasonable questioning of the customer conducted, and a judgement made in good faith taking account of the perceived risk. Liability shall only arise in the case of blatant and obvious omissions in identification efforts.

Justification

It is unreasonable to impose a strict duty in the absence of a register of ownership or a legal obligation to declare beneficial ownership.

Amendment 72
Article 7, paragraph 1, point (d)

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

(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.

Justification

The expression 'due diligence' implies a formal and expensive process, while 'monitoring' is rather less formal but quite adequate. In particular it is a more appropriate approach for SMEs.

Amendment 73
Article 7, paragraph 2

2. The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction.

2. The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. ***The institutions and persons covered by this Directive should be able to demonstrate to the authorities mentioned in Article 33, including self-regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.***

Justification

The emphasis on a risk-based approach also includes a degree of discretion for those covered by these obligations. Consequently, it is reasonable to require them to justify and document their risk-based decisions.

Amendment 74
Article 7, paragraph 3

3. With regard to the service of money transmission referred to in point 4 of Annex I to Directive 2000/12/EC, the special provisions on customer identification set out in Regulationof the European Parliament and of the Council on payer's information accompanying credit transfers and transfers executed by money remitters shall apply. Deleted

Justification

See justification for Amendment 68.

Amendment 75
Article 8, paragraph 1

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

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

Justification

In principle, the identity should be verified before a business relationship is established and, in any case, before any financial transaction is carried out.

Amendment 76
Article 8, paragraph 1 a (new)

1a. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary 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 should be completed as soon as practicable after the initial contact.

Justification

Verification of identity can be left until after a business relationship has been established provided this is justified on grounds of the low risk of money laundering or terrorist financing. This will facilitate the conduct of business.

Amendment 77

Article 8, paragraph 1 b (new)

1b. By way of derogation from paragraphs 1 and 1a, Member States may, in relation to life insurance business, allow the verification of the identity of the beneficiary under the policy to take place after having established the business relationship. In all such cases verification should take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

Justification

In the case of life insurance, it is obviously not the establishment of the business relationship (conclusion of the insurance contract), but the related financial transaction (payout of life assurance policy) that is the key element involving a risk of money laundering. Consequently, it has been spelt out that identity must have been reliably verified at the time of the financial transaction.

Amendment 78

Article 8, paragraph 2

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

2. Member States shall require that, where the institution or person concerned is unable to ***meet the obligations to determine customer identity in accordance with*** points (a), (b) and (c) of Article 7(1), it may ***only*** open ***an*** account ***provided there are adequate safeguards in place to ensure that financial transactions are not performed on behalf of the client until final clarification on the basis of full compliance with the aforementioned provisions is obtained; in the event of continued non-compliance***

with the aforementioned provisions, the institution or person concerned shall not establish a business relationship or perform **any** transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer.

Member States shall not be obliged to apply this provision in situations when notaries, independent legal professionals, auditors, external accountants and tax advisors are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

Justification

The reference to safeguards makes this requirement more workable. The last paragraph serves to make clear precisely who is covered by the requirement in connection with the provision of legal advice.

Amendment 79
Article 9, paragraph 1

1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of EUR **1 000** or more.

1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of EUR **3 000** or more.

Justification

For practical reasons and in line with a risk-based approach, a threshold of €3 000 is appropriate for customer identification.

Amendment 80
Article 10, paragraph - 1 (new)

-1. By way of derogation from Articles 6(a), (b) and (d), 7 and 8(1), the institutions and persons subject to this Directive shall not be subject to the

requirements provided for in those Articles where the customer is a credit or financial institution covered by this Directive, or a credit or financial institution situated in a third country which imposes equivalent requirements to those laid down by this Directive and are supervised for compliance with those requirements.

Justification

Exemption for partners in a business relationship subject the provisions of the money laundering directive. It is not appropriate for financial service providers to be identifying each other and monitoring each others' compliance with the money laundering directive. Individuals may also be subject to the simplified customer due diligence obligations if their activities comply with the relevant requirements of the Directive.

Amendment 81

Article 10, paragraph 1, introductory part

1. By way of derogation from **Articles 6, 7 and 8(2)** Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of **customers who represent a low risk of money laundering, such as:**

1. By way of derogation from **Articles 6(a), (b) and (d), 7 and 8(1)** Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of:

Amendment 82

Article 10, paragraph 1, point (a)

(a) credit and financial institutions from the Member States, or from third countries provided that they are subject to requirements to combat money laundering consistent with international standards and are supervised for compliance with those requirements;

Deleted

Justification

Deleted in line with Amendment 77.

Amendment 83
Article 10, paragraph 1, point (c)

(c) 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 consistent with international standards and are supervised for compliance with those requirements.

(c) 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;***

Justification

Clarification of the exemption allowed by Article 10(1) and addition of terrorist financing.

Amendment 84
Article 10, paragraph 1, point (c a) (new)

(ca) domestic public authorities;

Justification

Simplified due diligence requirement for general checks by public authorities.

Amendment 85
Article 10, paragraph 1, closing part (new)

or in respect of any other customer representing a low risk of money laundering or terrorist financing which meets the technical criteria established in accordance with Article 37(1)(b).

Justification

Sets the starting point for simplified customer due diligence within the framework of the committee procedure under Article 37.

Amendment 86
Article 10, paragraph 1 a (new)

1a. In the cases mentioned in paragraphs -1 and 1, persons and institutions shall in any case gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

Justification

This amendment clarifies the fact that any decision on the derogations from customer identification obligations provided for by Article 10, paragraphs -1 and 1 must be based on verifiable information.

Amendment 87
Article 10, paragraph 2

2. The Member States ***and the Commission*** shall inform each other of cases where they consider that a third country ***does not meet*** the conditions laid down in ***paragraph 1(a), (b) or (c).***

2. The Member States shall inform each other ***and the Commission*** of cases where they consider that a third country ***meets*** the conditions laid down in ***paragraphs -1 or 1 or in other situations which meet the technical criteria established in accordance with Article 37(1)(b).***

Justification

Makes it clear that Member States are not only required to inform the Commission but also each other. Third countries whose attitude is ambiguous are not reported, the emphasis being rather on drawing up a positive list of third countries that satisfy money laundering and terrorist financing requirements.

Amendment 88
Article 10, paragraph 3, introductory part

3. By way of derogation from ***Articles 6, 7 and 8(2)***, Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of ***products and transactions which represent a low risk of money laundering, such as:***

3. By way of derogation from ***Articles 6(a), (b) and (d), 7 and 8(1)***, Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of:

Justification

Spells out the fact that there can be no derogation from customer identification requirements in the case of Article 6(c) (suspicion of money laundering or terrorist financing).

Amendment 89

Article 10, paragraph 3, point (d)

(d) electronic money, as defined in **Article 1** of Directive 2000/46/EC, where **low limits are imposed on the amount issued, the amount that can be stored on an electronic device or the size of the permitted transactions.**

(d) electronic money, as defined in **Article 1(3)(b)** of Directive 2000/46/EC, where, **if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150; or where, if the device can be recharged, a limit of EUR 2500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000 or more is redeemed in that same calendar year by the bearer as referred to in Article 3 of Directive 2000/46/EC;**

Justification

Clarifies the exemption from the customer due diligence obligation under Article 10(3) in the case of chargeable cards.

Amendment 90

Article 10, paragraph 3, point (d a) (new)

(da) insurance policy premiums for accidents or accidental damage to real assets, where the value of such assets is vouched to be realistic on the basis of cost or professional valuation;

Justification

Insurance policies for accidents carry a very low money laundering risk.

Amendment 91

Article 10, paragraph 3, point (d b) (new)

(db) credit agreements in which the credit account serves exclusively to settle the loan and the repayment of the loan is effected from an account which was opened in the name of the customer with a credit

*institution subject to this Directive
pursuant to Article 7(1)(a) to (c).*

Amendment 92
Article 10, paragraph 3, closing part (new)

*or in respect of any other product or
transaction representing a low risk of
money laundering or terrorist financing
which meets the technical criteria
established in accordance with Article
37(1)(b).*

Justification

*Application of simplified customer due diligence procedures where there is a low risk of
money laundering or terrorist financing provided that the low risk has been determined on the
basis of established technical criteria.*

Amendment 93
Article 10 a

Where the Commission adopts a decision pursuant to ***the first subparagraph of*** Article 37(3), the Member States shall prohibit the institutions and persons covered by this Directive from applying simplified due diligence to credit and financial institutions or listed companies from the third country concerned.

Where the Commission adopts a decision pursuant to Article 37(3), the Member States shall prohibit the institutions and persons covered by this Directive from applying simplified due diligence to credit and financial institutions or listed companies from the third country concerned.

Justification

Excludes financial service providers or other entities from third countries that do not satisfy requirements on combating money laundering and terrorist financing from simplified due diligence procedures.

Amendment 94
Article 11, paragraph 1, subparagraph 1 and subparagraph 2, introductory part

1. Member States shall require the institutions and persons covered by this Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 6, 7 and 8(2), in situations which by their nature can present a higher risk of

1. Member States shall require the institutions and persons covered by this Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 6, 7 and 8(3), in situations which by their nature can present a higher risk of

money laundering, and at least in the following situations in accordance with *the second, third and fourth subparagraphs of this paragraph*.

Where the customer has not been physically present for identification purposes, Member States shall require those institutions and persons to **apply** one or more of the following measures:

money laundering **or terrorist financing**, and at least in the following situations in accordance with *paragraphs 1a, 1b and 1c and in respect of other situations representing a high risk of money laundering or terrorist financing*.

1a. Where the customer has not been physically present for identification purposes, Member States shall require those institutions and persons to **take specific and adequate measures to compensate for the higher risk, for example by applying** one or more of the following measures:

Justification

Incorporation of Nassauer Amendment 102, concerning Article 11(1)(d)(new), in Nassauer Amendment 91, concerning Article 11(1), subparagraphs 1 and 2.

Amendment 102 of Nassauer will be withdrawn accordingly.

Amendment 95

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

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

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

Justification

Clarification of the wording.

Amendment 96

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

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by **an** institution covered by this Directive;

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by **a credit or financial** institution covered by this Directive;

Justification

Clarification of the wording with no substantive changes.

Amendment 97
Article 11, paragraph 1, subparagraph 2, point (c)

(c) that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

(c) **ensure** that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

Amendment 98
Article 11, paragraph 1, subparagraph 3, introductory part

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

1b. In respect of cross-frontier correspondent banking relationships with **respondent** institutions from third countries, Member States shall require their credit institutions to:

Justification

Enhanced customer due diligence requirements should focus on correspondent banking relationships between Member States and third countries.

Amendment 99
Article 11, paragraph 1, subparagraph 3, point (b)

(b) assess the respondent institution's anti-money laundering controls;

(b) assess the respondent institution's anti-money laundering **and anti-terrorist financing** controls;

Justification

The respondent institution's control should also cover terrorist financing.

Amendment 100
Article 11, paragraph 1, subparagraph 3, point (e)

Does not apply to English text.

Justification

Does not apply to English text.

Amendment 101

Article 11, paragraph 1, subparagraph 4, introductory part

In respect of ***relations*** with politically exposed persons, Member States shall require ***those*** institutions and persons to:

In respect of ***transactions or business relationships*** with politically exposed persons ***residing in another Member State or in a third country***, Member States shall require institutions and persons ***covered by this Directive*** to:

Amendment 102

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

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

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

Justification

The concept of risk management systems, which is difficult to define, should be replaced by the requirement to employ appropriate risk-based procedures.

Amendment 103

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

(b) have senior management approval for establishing business relationships with such customers;

Deleted

Justification

There seems no point in requiring senior management approval for establishing business relationships with PEPs.

Amendment 104

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

(c) take ***reasonable*** measures to establish the source of wealth and source of funds ***or by requiring to conduct ongoing monitoring of*** the business relationship.

(c) take ***adequate*** measures to establish the source of wealth and source of funds ***that are involved in*** the business relationship ***or transaction***:

Amendment 105
Article 11, paragraph 1, subparagraph 4, letter (c a) (new)

(ca) conduct enhanced ongoing monitoring of the business relationship.

Justification

If a business relationship with a politically exposed person offers grounds for suspecting that money laundering or terrorist financing is taking place, that business relationship should be the subject of enhanced ongoing monitoring.

Amendment 106
Article 11, paragraph 2

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

2. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank ***and will require that the credit institution takes appropriate measures to ensure that they do not engage in or continue correspondent relationships with a bank that is known to permit its accounts to be used by a shell bank.***

Justification

Blanket ban on business relationships with shell banks.

Amendment 107
Article 11, paragraph 3

3. Member States shall ensure that the institutions and persons covered by this Directive pay special attention to any money laundering threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

3. Member States shall ensure that the institutions and persons covered by this Directive pay special attention to any money laundering ***or terrorist financing*** threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in money laundering ***or terrorist financing*** schemes.

Justification

Revised legislative drafting with no substantive changes.

Amendment 108

Article 12

Member States may permit the institutions and persons covered by this Directive to rely on third parties to perform the requirements laid down in Article 7(1)(a) to (c).

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

Member States may permit the institutions and persons covered by this Directive to rely on third parties to perform the requirements laid down in Article 7(1)(a), to (c).

However, the ultimate responsibility ***for the performance of the requirements laid down in Article 7(1)(a) to (c)*** shall remain with the institution or person covered by this Directive which relies on the third party.

Justification

This provision gives Member States the option of transferring to third parties responsibility for customer due diligence procedures. In practice this means that existing identification data can be used with a view to facilitating business transactions. The amendment makes clear that responsibility for the performance of customer due diligence requirements rests with the institution or person who gives the instruction, and not with the third party which receives that instruction.

Amendment 109

Article 12 a (new)

Article 12a

In those cases where a Member State permits its institutions referred to in Article 2(1)(1) or (2) to be relied on as a third party domestically, that Member State shall in any case permit its institutions and persons referred to in Article 2(1) to recognise and accept, in accordance with the provisions laid down in Article 12, the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by an institution referred to in Article 2(1)(1) or

(2) in another Member State (with the exception of currency exchange offices and money transmission or remittance offices) and meeting the requirements laid down in Articles 13 and 14, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

In those cases where a Member State permits its currency exchange offices and money transmission or remittance offices referred to in Article 3(2)(a) to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with the provisions laid down in Article 12, the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by the same category of institution in another Member State and meeting the requirements laid down in Articles 13 and 14, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

In those cases where a Member State permits its persons referred to in Article 2(1)(3)(a) to (c) to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with the provisions laid down in Article 12, the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by a person referred to in Article 2(1)(3)(a) to (c) in another Member State and meeting the requirements laid down in Articles 13 and 14, even if the documents or data on which these requirements have been based are different to those required in

the Member State to which the customer is being referred.

Justification

This provision lays down in detail the requirements which customer due diligence procedures pursuant to Article 7(1) must meet if a Member State permits its credit institutions, financial institutions and, in particular, notaries and lawyers to rely on third parties to carry out such procedures.

Amendment 110

Article 13, paragraph 1, introductory part

1. For the purposes of this Section, ‘third parties’ shall mean institutions and persons who are ***equivalent to those*** listed in Article 2, ***and*** who satisfy the following requirements:

1. For the purposes of this Section, ‘third parties’ shall mean institutions and persons who are listed in Article 2, ***or equivalent institutions and persons situated in a third country***, who satisfy the following requirements:

Justification

Legal definition of the concept of ‘third parties’ in Section 4.

Amendment 111

Article 13, paragraph 1, point (a)

(a) they are subject to mandatory professional registration;

(a) they are subject to mandatory professional registration, ***recognised by law***;

Justification

Reference to the need for mandatory registration recognised by law.

Amendment 112

Article 13, paragraph 1, point (b)

(b) they apply customer due diligence measures and record keeping measures 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 V, or they are situated in a third country

(b) they apply customer due diligence measures and record keeping measures ***as laid down or*** 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 V, or they are situated in a third

which imposes equivalent requirements to those laid down in this Directive.

country which imposes equivalent requirements to those laid down in this Directive.

Justification

Legislative drafting change.

Amendment 113
Article 13, paragraph 2

2. The Member States **and the Commission** shall inform each other of cases where they consider that a third country **does not meet** the conditions laid down in paragraph 1(b).

2. The Member States shall inform each other **and the Commission** of cases where they consider that a third country **meets** the conditions laid down in paragraph 1(b).

Justification

A list should be drawn up of third countries which do take adequate measures to combat money laundering.

Amendment 114
Article 13 a

Where the Commission adopts a decision pursuant to **the first subparagraph of** Article 37(3), the Member States shall prohibit the institutions and persons covered by this Directive from **allowing** third parties from the third country concerned to perform **customer due diligence on their behalf**.

Where the Commission adopts a decision pursuant to Article 37(3), the Member States shall prohibit the institutions and persons covered by this Directive from **relying on** third parties from the third country concerned to perform **the requirements laid down in Article 7(1)(a) to (c)**.

Justification

For the purposes of this section, third parties may not be allowed to perform customer due diligence if they have their head office in a third country which has failed to enact adequate provisions to combat money laundering.

Amendment 115
Article 14

Third parties shall make information **based on** the requirements laid down in Article

Third parties shall make information **requested in accordance with** the

7(1)(a), **(b) and** (c) immediately available to the institution or person to which the customer is being referred.

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

requirements laid down in Article 7(1)(a) **to** (c) immediately available to the institution or person to which the customer is being referred.

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

Justification

Legislative drafting change.

Amendment 116
Article 15

Article 15

Deleted

Each Member State shall in any case permit its institutions and persons referred to in Article 2(1), (2) and (3) points (a) to (d) to recognise and accept the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by an institution or person referred to in Article 2(1), (2) and (3) points (a) to (d) in another Member State and meeting the requirements laid down in Articles 12, 13 and 14, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

Justification

The requirements laid down in Article 15 are now set out at the beginning of the section in Article 12a.

Amendment 117
Article 16

This Section shall not apply to outsourcing or agency relationships where on the basis of

This Section shall not apply to outsourcing or agency relationships where on the basis of

a contractual arrangement the outsourcing service provider or agent is to be regarded as ***synonymous with*** the institution or person covered by this Directive.

a contractual arrangement the outsourcing service provider or agent is to be regarded as ***part of*** the institution or person covered by this Directive.

Amendment 118
Article 17

Member States shall require that the institutions and persons covered by this Directive ***examine with*** special attention any activity which they regard as particularly likely, by its nature, to be related to money laundering and in particular complex ***or*** unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose.

Member States shall require that the institutions and persons covered by this Directive ***pay*** special attention ***to*** any activity which they regard as particularly likely, by its nature, to be related to money laundering ***or terrorist financing*** and in particular complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or ***visible*** lawful purpose.

Justification

Legislative drafting changes and inclusion of terrorist financing as a separate offence (see justification to Amendment 5).

Amendment 119
Article 18

Each Member State shall establish a financial intelligence unit in order effectively to combat money laundering.

Each Member State shall establish a financial intelligence unit in order effectively to combat money laundering ***and terrorist financing***.

That financial intelligence unit shall be established as a central national unit, ***with adequate resources***. It shall be responsible for receiving, ***and, to the extent permitted, for*** requesting, analysing and disseminating to the competent authorities, disclosures or financial information which concern suspected proceeds of crime or which are required by national legislation or regulation.

That financial intelligence unit shall be established as a central national unit. It shall be responsible for receiving, requesting, analysing and disseminating to the competent authorities, disclosures or financial information which concern suspected proceeds of crime or which are required by national legislation or regulation. ***It shall be provided with adequate resources in order to fulfil its missions.***

Member States shall ensure that the financial intelligence unit has access, directly or indirectly, on a timely basis, to

the financial, administrative and law enforcement information that it requires to properly undertake its functions.

Amendment 120
Article 18, paragraph 2 a (new)

The adequate resources provided by Member States to the financial intelligence unit shall allow it to provide the institutions and persons covered by this Directive with timely and specific feedback on the effectiveness of and follow-up to reports of suspected money laundering transactions.

Justification

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

Amendment 121
Article 19, paragraph 1, point (a)

(a) by **directly and** promptly informing the financial intelligence unit, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that money laundering is being committed or attempted.

(a) by promptly informing the financial intelligence unit, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that money laundering **or terrorist financing** is being **or has been** committed or attempted.

Amendment 122
Article 19, paragraph 1, point (b)

(b) by promptly furnishing the financial intelligence unit, at its request, with all necessary **further** information, in accordance with the procedures established by the applicable legislation.

(b) by promptly furnishing the financial intelligence unit at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

Justification

Stipulation that information must be forwarded not only to the financial intelligence unit but also to other authorities responsible for combating money laundering or terrorist financing.

Amendment 123 Article 20, paragraph 1

1. ***In the case of the notaries and other independent legal professionals*** referred to in Article 2(3)(b), Member States may designate an appropriate self-regulatory body of the profession concerned as the authority to be informed in the first instance in place of the financial intelligence unit. ***In such case they shall lay down the appropriate forms of co-operation between that body and the financial intelligence unit.***

1. ***By way of derogation from Article 19(1)***, Member States may, ***in the case of the persons*** referred to in Article 2 (1)(3)(a) and (b), designate an appropriate self-regulatory body of the profession concerned as the authority to be informed in the first instance in place of the financial intelligence unit. ***Without prejudice to paragraph 2, the designated self-regulatory body shall in such cases forward the information to the financial intelligence unit promptly and unfiltered.***

Justification

Legal professionals can meet their reporting requirement by forwarding information to a self-regulatory body which is in turn required to pass on the relevant information.

Amendment 124 Article 21

Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have ***informed the financial intelligence unit.***

The financial intelligence unit may, under conditions to be determined by the national legislation, give instructions not to execute the operation.

Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is

Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering ***or terrorist financing*** until they have ***complied with Article 19(1)(a).***

In accordance with the legal provisions of the Member States, instructions may be given not to execute the operation.

Where such a transaction is suspected of giving rise to money laundering ***or terrorist financing*** and where to refrain in such

likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the institutions and persons concerned shall apprise the financial intelligence unit ***immediately afterwards***.

manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation ***or terrorist financing***, the institutions and persons concerned shall apprise the financial intelligence unit ***of the necessary information***.

Justification

This text reflects the compromise reached with difficulty in the Council. It is intended to help bring about the prompt adoption of the directive at first reading.

Amendment 125 Article 22, paragraph 1

1. Member States shall ensure that if, in the course of inspections carried out in the institutions and persons covered by this Directive by the ***competent*** authorities, or in any other way, those authorities discover facts that could ***constitute evidence of*** money laundering, they shall ***directly and*** promptly inform the financial intelligence unit.

1. Member States shall ensure that if, in the course of inspections carried out in the institutions and persons covered by this Directive by the authorities, ***as referred to in Article 33***, or in any other way, those authorities discover facts that could ***be related to*** money laundering ***or terrorist financing***, they shall promptly inform the financial intelligence unit.

Amendment 126 Article 22, paragraph 2

2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the financial intelligence unit if they discover facts that could ***constitute evidence of*** money laundering.

2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the financial intelligence unit if they discover facts that could ***be related to*** money laundering ***or terrorist financing***.

Justification

Inclusion of terrorist financing in the scope of the provision, see justification for Amendment 5; legislative drafting changes.

Amendment 127 Article 23

The disclosure in ***accordance with the***

The disclosure in ***good faith as foreseen in***

requirements of this Directive to the financial intelligence unit by an institution or person covered by this Directive or by an employee or director of such an institution or person of the information referred to in **Articles 19, 20 and 21** shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

Articles 19(1) and 20 by an institution or person covered by this Directive or by an employee or director of such an institution or person of the information referred to in **Articles 19 and 20** shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

Amendment 128
Article 24

Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering either internally or to the financial intelligence unit from being exposed to threats or hostile action.

Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering **or terrorist financing** either internally or to the financial intelligence unit from being exposed to threats or hostile action.

Justification

Inclusion of terrorist financing in the scope of the provision, see justification for Amendment 5; legislative drafting changes.

Amendment 129
Article 25, paragraph 1

The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted **to the financial intelligence unit** in accordance with **Articles 19, 20 and 21** or that a money laundering investigation is being or may be carried out.

1. The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted in accordance with **Articles 19 and 20** or that a money laundering **or terrorist financing** investigation is being or may be carried out.

Justification

Inclusion of matters relating to terrorist financing in the scope of the ban on disclosing that information has been forwarded in accordance with Articles 19 and 20 (see justification for Amendment 5).

Amendment 130 Article 25, paragraph 1 a (new)

1a. The above-mentioned prohibition does not include disclosure to the authorities referred to in Article 33, including the self-regulatory bodies, or disclosure for law enforcement purposes.

Justification

Clarification that the confidentiality requirement concerning disclosures pursuant to Articles 19 and 20 has no bearing on disclosures to the competent authorities or for law enforcement purposes.

Amendment 131 Article 25, paragraph 1 b (new)

1b. The above-mentioned prohibition does not prevent disclosure between institutions from Member States, or from third countries provided that they meet the conditions laid down in Article 10(-1), belonging to the same group as defined by Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council¹.

¹ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

Justification

Regardless of the ban on disclosure, financial service providers have a legitimate interest in learning about operations covered by the reporting requirements. It should be stipulated, therefore, that groups of persons, as defined in Directive 2002/87/EC, who are involved in providing legal advice or who cooperate in a network and individual financial service

providers or persons involved in the same transaction should be able to exchange information. This right of disclosure is strictly circumscribed. It does not run counter to, but will in fact serve, the purpose of the ban, that of safeguarding law enforcement procedures. It will provide financial service providers with the information they require concerning suspicions of money laundering or terrorist financing in their areas of activity.

Amendment 132
Article 25, paragraph 1 c (new)

1c. The above-mentioned prohibition does not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a network. For the purposes of this Article, a network means the larger structure to which the person belongs and which shares common ownership, management or compliance control.

Justification

See justification for Amendment 128.

Amendment 133
Article 25, paragraph 1 d (new)

1d. For institutions or persons referred to in Article 2(1)(2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition in paragraph 1 does not prevent disclosure between the relevant institutions provided that they are situated in a Member State, or in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged shall be used

exclusively for the purposes of the prevention of money laundering and terrorist financing.

Justification

See justification for Amendment 128.

Amendment 134
Article 25, paragraph 2

Where ***independent legal professionals, notaries, auditors, accountants and tax advisors, acting as independent legal professionals***, seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the first paragraph.

2. Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the first paragraph.

Justification

The provision makes clear that, when giving legal advice, persons acting as legal professionals are entitled to advise clients in such a way that they behave lawfully. Such advice should not be regarded as a breach of the ban on disclosure laid down in Article 25(1).

Amendment 135
Article 25, paragraph 2 a (new)

2a. The Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1b, 1c or 1d.

Justification

This provision stipulates that Member States should notify each other and the Commission of those third countries which are subject to requirements equivalent to those laid down in the directive on money laundering. The forwarding of information to credit institutions, financial institutions and legal professionals situated in such third countries should not constitute a breach of the ban on disclosure laid down in Article 25(1).

Amendment 136
Article 25 a (new)

Article 25a

Where the Commission adopts a decision pursuant to Article 37(3), the Member States shall prohibit the disclosure between institutions and persons covered by this Directive and institutions and persons from the third country concerned.

Justification

Should the Commission establish that a third country has failed to impose requirements equivalent to those laid down in the directive on money laundering, the ban on disclosure to persons and institutions situated in the third country in question would once again apply.

Amendment 137
Article 26, introductory part

Member States shall require the institutions and persons covered by this Directive to keep the following documents and information for use ***as evidence*** in any investigation into money laundering:

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

Justification

This provision defines the requirement to keep records and documents for use in investigations into money laundering or terrorist financing or with a view to analysis of the relevant data by the financial intelligence unit.

Amendment 138
Article 26, point (c)

(c) in the case of cash payments for an amount of EUR 15 000 or more, the supporting evidence and records of these receipts for a period of at least five years following the execution of the cash payments.

Deleted

Justification

This provision is superfluous, given that the relevant transactions are already covered, in general terms, by the provisions of Article 2(1)(3)(f).

Amendment 139
Article 27, paragraph 1

1. Member States shall require the institutions covered by this Directive to apply in their branches and majority owned subsidiaries located in third countries measures at least equivalent to those set out in this Directive with regard to customer due diligence and record keeping.

Where the legislation of the third country does not **ensure** application of such equivalent measures, the Member States shall require the institutions concerned to inform the competent authorities of the relevant home State accordingly.

1. Member States shall require the **credit and financial** institutions covered by this Directive to apply, **where applicable**, in their branches and majority owned subsidiaries located in third countries measures at least equivalent to those set out in this Directive with regard to customer due diligence and record keeping.

Where the legislation of the third country does not **permit** application of such equivalent measures, the Member States shall require the institutions concerned to inform the competent authorities of the relevant home **Member** State accordingly.

Justification

Legislative drafting changes.

Amendment 140
Article 27, paragraph 2

2. The Member States and the Commission shall inform each other of cases where the legislation of the third country does not **ensure** application of the measures required under the first subparagraph of paragraph 1.

2. The Member States and the Commission shall inform each other of cases where the legislation of the third country does not **permit** application of the measures required under the first subparagraph of paragraph 1 **and coordinated action could be taken to pursue a solution.**

Justification

This provision requires the Commission and the Member States not only to inform each other of cases where a third country does not have adequate provisions governing customer due diligence and record keeping, but also to take coordinated action to seek possible solutions.

Amendment 141
Article 27, paragraph 2 a (new)

2a. Member States shall require that in cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1, institutions will take additional measures to effectively handle the risk of money laundering or terrorist financing.

Justification

This provision requires the Member States, in cases where a third country has inadequate provisions governing customer due diligence and record keeping, as referred to in Article 27(2), to take additional measures to combat the risk of money laundering and terrorist financing.

Amendment 142
Article 28

Member States shall ***take the necessary measures to ensure*** that their credit and financial institutions ***are able*** to respond fully and rapidly to enquiries from the financial intelligence unit, 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 the business relationship.

Member States shall ***require*** that their credit and financial institutions ***have systems in place that enable them*** to respond fully and rapidly to enquiries from the financial intelligence unit, 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 the business relationship.

Justification

Legislative drafting changes.

Amendment 143
Article 29

Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering by maintaining comprehensive statistics on matters relevant to the effectiveness of

Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering ***or terrorist financing*** by maintaining comprehensive statistics on matters

such systems.

Such statistics shall at a minimum cover the number of suspicious transaction reports made to the financial intelligence unit, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted **and** the number of persons convicted for money laundering offences.

relevant to the effectiveness of such systems.

Such statistics shall at a minimum cover the number of suspicious transaction reports made to the financial intelligence unit, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering **or terrorist financing** offences, **and the amounts of property frozen, seized or confiscated**.

Justification

Inclusion of terrorist financing in the scope of the provision. Statistics should cover the number of reports, the follow-up to such reports and the proceedings initiated as a result, in particular the number of persons prosecuted and the volume of assets confiscated.

Amendment 144

Article 29, paragraph 2 a (new)

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

Justification

The statistics on the number of cases investigated, persons prosecuted and persons convicted of money laundering following suspicious transaction reports need to be improved. The statistics must cover not only the number of suspicious transaction reports, but also the action taken on those reports, the number of cases investigated and the number of persons prosecuted and convicted.

Amendment 145

Article 30

Member States shall require that the institutions and persons covered by this Directive establish adequate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management and communication in order to forestall and prevent operations related to money

1. Member States shall require that the institutions and persons covered by this Directive establish adequate **and appropriate** policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, **compliance management** and communication in order to forestall and prevent operations related

laundering.

to money laundering **or terrorist financing**.

2. Member States shall require that institutions subject to this Directive communicate relevant policies and procedures where applicable to branches and majority-owned subsidiaries in third countries.

Justification

This provision lays down that the requirement for institutions and persons covered by the directive to develop procedures which enable them to meet their obligations under the directive. These procedures also apply to branches and subsidiaries in third countries.

Amendment 146 Article 31, paragraph 1

1. Member States shall require that the institutions and persons covered by this Directive take appropriate measures so that their employees are aware of the provisions **contained in** this Directive.

These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in Article 2(3) undertakes his professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

1. Member States shall require that the institutions and persons covered by this Directive take appropriate measures so that their **relevant** employees are aware of the provisions **in force on the basis of** this Directive.

These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering **or terrorist financing** as well as to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in Article 2**(1)**(3) undertakes his professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

Justification

This provision requires the relevant employees covered by the directive to familiarise themselves with the relevant national laws transposing the directive, rather than with the directive itself.

Amendment 147
Article 31, paragraph 2

2. Member States shall ensure that the institutions and persons covered by this Directive have access to up-to-date information on the practices of money launderers and on indications leading to the recognition of suspicious transactions.

2. Member States shall ensure that the institutions and persons covered by this Directive have access to up-to-date information on the practices of money launderers **and terrorist financiers** and on indications leading to the recognition of suspicious transactions.

Justification

The provision requires Member States to offer the institutions and persons covered by the directive access to up-to-date information on the criminal practices of money launderers and terrorist financiers.

Amendment 148
Article 31, paragraph 3

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

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

Justification

Legislative drafting changes, inclusion of terrorist financing in the scope of the provision.

Amendment 149
Article 32, paragraph 1

1. Member States shall provide that currency exchange offices, trust and company service providers must be licensed or registered and casinos be licensed in order to operate their business legally.

1. Member States shall provide that currency exchange offices, trust and company service providers must be licensed or registered and casinos be licensed in order to operate their business legally. ***Without prejudice to future Community legislation, Member States shall provide that money transmission or remittance offices shall be licensed or registered in order to operate their business legally.***

Justification

This provision provides the basis for the requirement that exchange offices, certain financial service providers and casinos must be licensed or registered, thereby making it more difficult for them to establish business relationships for the purposes of money laundering or terrorist financing.

Amendment 150 Article 33, paragraph 1

1. Member States shall require the competent authorities to effectively monitor compliance with the requirements of this Directive by **all** the institutions and persons covered by this Directive.

1. Member States shall require the competent authorities **at least** to effectively monitor **and to take the necessary measures with a view to ensuring** compliance with the requirements of this Directive by the institutions and persons covered by this Directive.

Justification

This provision provides the basis for the requirement that Member States must monitor compliance with the provisions of the directive on money laundering.

Amendment 151 Article 33, paragraph 2

2. Member States shall ensure that the competent authorities have adequate powers, including the possibility to **obtain** information, and have adequate resources to perform their functions.

2. Member States shall ensure that the competent authorities have adequate powers, including the possibility to **compel the production of any** information **that is relevant to monitoring compliance and perform checks**, and have adequate resources to perform their functions.

Justification

The amendment makes clear that the competent authorities have the possibility to obtain information concerning compliance with the provisions of the directive on money laundering and restricts the scope of the power to compel the production of information to that needed to monitor compliance.

Amendment 152 Article 33, paragraph 2 a (new)

2a. In the case of credit and financial institutions and casinos, competent

authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.

Justification

This provision provides the legal basis for enhanced supervisory powers, in particular for on-site inspections.

Amendment 153

Article 33, paragraph 2 b (new)

2b. In the case of the natural and legal persons referred to in Article 2(1)(3)(a) to (f), Member States may allow the functions referred to in paragraph 1 to be performed on a risk-sensitive basis.

Justification

With a view to implementing the risk-oriented approach underpinning the directive, measures to monitor compliance with the provisions of the directive, in particular by the members of legal and similar professions, may be taken if there is evidence of a genuine risk of money laundering or terrorist financing.

Amendment 154

Article 33, paragraph 2 c (new)

2c. In the case of the persons referred to in Article 2(1)(3)(a) and (b), Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with the provisions set out in paragraph 2.

Justification

In the case of legal professions, monitoring tasks can be transferred to self-regulatory bodies, provided that they are in a position to obtain the requisite information.

Amendment 155
Article 33 a (new)

COOPERATION

Article 33a

The Commission shall lend such assistance as may be needed to facilitate coordination, including the exchange of information between financial intelligence units within the European Union.

Justification

This provision requires the Commission to coordinate and support the requisite exchange of information between financial intelligence units within the European Union.

Amendment 156
Chapter V, Section 3, title

Does not apply to English text.

Justification

Does not apply to English text.

Amendment 157
Article 34

The penalties applicable to infringements of the national provisions adopted pursuant to this Directive must be effective, proportionate and dissuasive.

1. Member States shall ensure that natural and legal persons subject to this Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive. ***In the event of infringements, the penalties*** must be effective, proportionate and dissuasive.

Justification

This provision makes clear that, as a matter of principle, breaches of the directive on money laundering will be punished. It must be possible, therefore, for natural and legal persons subject to the directive to be held liable should they fail to meet the obligations it lays down. Irrespective of the fact that national responses to such breaches are not confined to penalties, effective, proportionate and dissuasive sanctions are needed. There is no question that these should include formal penalties.

Amendment 158
Article 34, paragraph 1 a (new)

1a. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions can be imposed against credit and financial institutions where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

Justification

In addition to criminal law sanctions, this provision clears the way for appropriate administrative measures to be taken against credit and financial institutions which breach the directive on money laundering.

Amendment 159
Article 34, paragraph 1 b (new)

1b. In the case of legal persons, Member States shall ensure that at least they can be held liable for infringements referred to in paragraph 1 which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

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

Justification

This provision establishes the liability of legal persons and links that liability to the actions of any individual, who, on the basis of the structure of the legal person, has the power to represent it, to take decisions on its behalf or to exercise control within it.

Amendment 160 Article 34, paragraph 1 c (new)

1c. In addition to the cases already provided for in paragraph 1b, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1b has made possible the commission of the infringements referred to in paragraph 1 for the benefit of a legal person by a person under its authority.

Justification

The provision explicitly extends the liability of legal persons to cover cases involving inadequate supervision or control by a responsible person.

Amendment 161 Article 35

Article 35

Deleted

1. Member States shall ensure that legal persons can be held liable for infringements of the obligations on record keeping, customer identification and reporting suspicious transaction referred to in this Directive and which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person,

(b) an authority to take decisions on behalf of the legal person,

(c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the infringements referred to in paragraph 1 for the benefit of the legal person by a person under its authority.

Justification

The provisions governing sanctions are set out in Section 3. It is enough to require Member States to impose effective, proportionate and dissuasive sanctions. This arrangement takes account of the differences between national systems when it comes to penalties and administrative measures.

Amendment 162
Article 36

Article 36

Deleted

Member States shall ensure that a legal person held liable for infringements of the obligations on record keeping, customer identification and reporting suspicious transaction referred to in this Directive is punishable by effective, proportionate and dissuasive sanctions, which shall, inter alia, include:

- (a) fines;*
- (b) a ban on access to public assistance or subsidies;*
- (c) temporary or permanent ban on engaging in commercial activities;*
- (d) placing under judicial supervision;*
- (e) a judicial winding-up.*

Justification

See justification for Amendment 157.

Amendment 163
Chapter VI, Title

Implementing **and amending** measures

Implementing measures

Justification

Under the comitology procedure, the scope for action by the Commission should be restricted to implementation of the directive. The amendment of the directive should require a procedure involving Parliament.

Amendment 164
Article 37, paragraph 1, introductory part

1. In order to take account of technical developments in the fight against money laundering and to ensure uniform application of this Directive, the Commission **shall**, in accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

1. In order to take account of technical developments in the fight against money laundering **or terrorist financing** and to ensure uniform application of this Directive, the Commission **may**, in accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

Justification

Inclusion of terrorist financing as a separate offence, legislative drafting changes.

Amendment 165
Article 37, paragraph 1, points (a), (b) and (c)

(a) clarification of the technical aspects of the definitions in Article 1(2) and in Article 3(2)(a) and (d), (5), (8), (9), (10), (11) and (12);
(b) establishment of detailed rules for identifying the situations which represent a low risk of money laundering as referred to in Article 10(1), (2) and (3);
(c) establishment of detailed rules for identifying situations which represent a high risk of money laundering as referred to in Article 11;

Deleted

Amendment 166
Article 37, paragraph 1, point (d)

(d) establishment of **detailed rules** for **identifying situations where**, in accordance with Article 2(2), it is justified not to apply this Directive to certain **undertakings** carrying out a financial activity on an occasional or very limited basis.

(d) establishment of **technical criteria** for **assessing whether**, in accordance with Article 2(2), it is justified not to apply this Directive to certain **legal or natural persons** carrying out a financial activity on an occasional or very limited basis.

Justification

Extends the scope of the provision governing the identification of a low risk of money laundering or terrorist financing to cover natural persons as well and restricts the Commission's implementing powers to the establishment of technical criteria.

Amendment 167
Article 37, paragraph 1 a (new)

1a. In any case, the Commission shall adopt the first implementing measures to give effect to paragraph 1(d) within six months following the entry into force of this Directive.

Justification

The provision requires the Commission to take decisions concerning the identification of a low risk of money laundering or terrorist financing and decisions as to whether legal or natural persons carrying out a financial activity on an occasional or limited basis should not be covered by the directive at the latest within six months following the entry into force of the directive.

Amendment 168
Article 37, paragraph 2

2. The Commission shall, in accordance with the procedure referred to in Article 38(2), adapt the amounts referred to in Articles 2(f), 6(b), 9(1) and 10(2)(a) **in order to take account of inflation.**

2. The Commission shall, in accordance with the procedure referred to in Article 38(2), adapt the amounts referred to in Articles 2(**1**)(3)(f), 6(b), 9(1) and 10(3)(a) **and (d) taking into account Community legislation, economic developments as well as changes in international**

standards.

Justification

Legislative drafting changes.

Amendment 169
Article 37, paragraph 3

3. The Commission shall, in accordance with the procedure referred to in Article 38(2), adopt a decision finding that a third country does not meet the conditions laid down in Article 10(1)(a), (b) or (c) or in **Article 13(b)**, or that the legislation of that third country does not *ensure* application of the measures required under the first subparagraph of Article 27(1).

3. The Commission shall, in accordance with the procedure referred to in Article 38(2), adopt a decision finding that a third country does not meet the conditions laid down in Article 10(-1) or (1), **Article 25(1b), (1c) or (1d), or in the measures established in accordance with Article 13(1)(b)**, or that the legislation of that third country does not *permit* application of the measures required under the first subparagraph of Article 27(1).

Justification

Legislative drafting changes.

Amendment 170
Article 38

1. The Commission shall be assisted by a Committee on the Prevention of Money Laundering, hereinafter ‘the Committee’.

1. The Commission shall be assisted by a Committee on the Prevention of Money Laundering **and Terrorist Financing**, hereinafter ‘the Committee’. **It shall be composed of the representatives of the Member States and chaired by the representative of the Commission.**

2. **Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.**

2. **The Committee shall adopt its rules of procedure.**

3. **The Committee shall adopt its rules of procedure.**

3. **Where this Directive imposes procedural requirements for the adoption of implementing measures, the**

representative of the Commission shall submit a draft of those measures to the Committee and to the European Parliament.

The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter which shall not be less than one month. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3a. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee and if no objection has been raised in the meantime by the competent committee of the European Parliament.

3b. Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, or an objection has been raised by the competent committee of the European Parliament, the Commission shall, without delay, submit to the Council and to the European Parliament a proposal relating to the measures to be taken.

3c. If, within a period which may not exceed three months from the referral, the proposal has not been rejected either by the European Parliament, by an absolute majority of its members, or by the Council, acting by qualified majority, it shall be adopted by the Commission. Otherwise the Commission shall submit an amended proposal or present a legislative proposal on the basis of the Treaty.

Justification

Inclusion of terrorist financing as a separate offence.

Amendment 171
Article 38, paragraph 3 d (new)

3d. Without prejudice to any implementing measures already adopted, application of the provisions of this Directive which provide for the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall cease four years after the entry into force of this Directive. Acting on a proposal from the Commission, the European Parliament and the Council may extend the period of validity of the relevant provisions, in accordance with the procedure laid down in Article 251 of the Treaty, and, with that aim in view, shall review those provisions prior to expiry of the four-year period.

Justification

This provision limits the period of validity of implementing measures adopted pursuant to Article 38(2) to four years following the entry into force of the directive. This is necessary in order to safeguard Parliament's and the Council's codecision powers under Article 251 of the Treaty, in keeping with the legal thinking behind Article I-36 of the Treaty establishing a European Constitution.

Amendment 172
Article 39

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

Within ***two years*** of the ***expiry of the deadline for transposition laid down in Article 41***, and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive, and submit it to the European Parliament and the Council. ***For the first such report, the Commission shall include a specific examination of the treatment of lawyers and other professionals, in line with the obligation in Article 2 of Directive 2001/97/EC.***

Amendment 173
Article 39 a (new)

Article 39a

Before [insert date 36 months after the date in Article 41], the Commission shall present a report to the European Parliament and to the Council on the threshold percentages in Article 3(8), paying particular attention to the possible expediency and consequences of a reduction of the percentage in points (a)(i), (b)(i) and (b)(iii) of Article 3(8) from 25% to 20%. On the basis of the report the Commission may submit a proposal for amendments to this Directive.

Justification

This provision clears the way, after three years, for a review of and, if appropriate, a reduction in the threshold percentage used in Article 3(8) to establish the economic owner of a legal person.

Amendment 174
Article 41

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [insert date **12** months] following entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [insert date **24** months] following entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the main provisions

of national law which they adopt in the field covered by this Directive.

of national law which they adopt in the field covered by this Directive.

Justification

In view of the fact that the second directive on money laundering has not yet been transposed into the law of all the Member States and no report assessing the experience gained with its application has yet been produced, it would seem to be appropriate to grant the Member States a two-year period in which to transpose the directive.

EXPLANATORY STATEMENT

Development of EU legislation on money laundering

In particular in connection with international organised crime, which primarily operates across borders, money laundering has become a criminal activity which has the capacity to undermine confidence in the financial system, so that effective measures must be taken to deal with it. The European Community's legislative efforts to combat money laundering began with the 1991 directive. It focused on the concealment of the proceeds of drug-related crimes and imposed on credit and financial institutions a requirement to establish the identity of their customers and to inform the competent authorities of transactions which carried the suspicion of money laundering. In 2001, the directive was comprehensively overhauled and its scope was substantially broadened, as regards both the range of criminal offences seen as precursors to money laundering and the professions and actions covered.

The directive was based in particular on the recommendations of the Financial Action Task Force on Money Laundering (FATF) set up in July 1989 at the Paris Summit of the seven leading industrialised countries. The FATF revised its 40 recommendations in June 2003, at the same time expanding their scope to cover the financing of terrorist offences.

The Commission proposal for the third money laundering directive

It is primarily this latter factor which has prompted the attempt to conclude the legislative process at first reading, on the basis of an agreement between the Council, the Commission and Parliament, thereby avoiding a time-consuming second and, possibly, third reading. In addition, there is an urgent need to establish a legal basis for measures to combat terrorist financing.

It is welcome that the Commission proposal should make a **risk-sensitive approach** one of its guiding principles. This reflects the fact that the danger of money laundering and terrorist financing is not equally high in all cases. For that reason, the directive does not make customer due diligence a requirement if the relevant financial transactions offer only a minimal risk of money laundering. The minimal nature of the risk of money laundering or terrorist financing also justifies the decision to exclude from the scope of the directive firms which only occasionally offer limited financial services.

As regards the more detailed provisions, the Commission defines **money laundering as a criminal offence**, with a view to making criminal law sanctions a requirement. However, the directive should confine itself to imposing a ban on money laundering and terrorist financing: the Member States should be free to decide what punishments they wish to impose.

The machinery of the directive has now been expanded to cover **terrorist financing** - quite rightly in view of its significance in criminal terms. However, your rapporteur cannot endorse the Commission's decision to portray terrorist financing as a sub-category form of money laundering. Unlike in the case of money laundering, where terrorist financing is suspected there is no need to establish a link to a prior criminal offence. As a matter of legal principle, therefore, it would seem to be appropriate to draw a distinction between money laundering, which presupposes a prior criminal offence, and terrorist financing and to establish the latter

as a separate offence.

Although the scope of the directive has been extended to cover **life insurance intermediaries and trust and company service providers**, once again the intention is not that these professional groups should come under any general suspicion of involvement in money laundering. Instead, the aim is to counter attempts by money launderers to exploit such financial service providers for the purposes of money laundering and terrorist financing.

The Commission proposal leaves untouched the delicate compromise reached in the second money laundering directive concerning the **inclusion of notaries and legal professionals**, in particular lawyers, in the scope of the directive, with Member States retaining the option of laying down exceptions subject to certain conditions. However, a **clarification** of the **compromise** reached in connection with the second money laundering directive would seem to be desirable.

The protection of the relationship of trust, in particular between a lawyer and his/her client, is an integral part of the European concept of the rule of law. Completely confidential discussions between lawyer and client are fundamental to an effective legal defence. A client must be in no doubt that such discussions are indeed confidential. The extension of the requirements laid down in the money laundering directive to cover lawyers as a matter of principle has given rise to doubts as to whether the complete confidentiality of the information communicated to a lawyer is still guaranteed. This question is all the more relevant because in individual cases a client at least may find it difficult to draw a distinction between a lawyer's financial service-related activities, pursuant to the list in Article 2(1)(3)(b), and the act of providing legal advice, which is covered by lawyer-client privilege. Under these circumstances, it is particularly worrying that the protection of professional confidentiality should not be a binding requirement, but has instead been left to the discretion of the Member States.

The FATF recommends that the FATF countries should have access to information about the beneficial owners of legal persons and the control structures. Accordingly, in connection with the customer identification requirements for legal persons and other economic entities the Commission proposal introduces the concept of the **economic owner**. An economic owner is defined as a person whose shareholding or voting rights exceed 10% of the total. However, it is clear that the mere fact of holding a 10% share of voting rights does not enable the person concerned to exert decisive economic influence. Given that this proposal is designed to reveal precisely who wields decision-making power within a legal person, the proportion stipulated is too small. Company law rules in the Member States give the holders of a 20% or 25% share of voting rights the possibility of activating a blocking minority, even if they cannot exert a decisive influence. On that basis, the definition of an 'economic owner' should stipulate a threshold value of not less than 25%.

Enhanced customer due diligence requirements are to apply in connection with relationships with so-called **politically exposed persons (PEPs)**. The proposal for a directive defines as PEPs persons who have been entrusted with prominent public functions or who engage in complex financial or business transactions. No fundamental reservations need be expressed concerning the imposition of particularly painstaking customer identification requirements where this group of persons is concerned. It is questionable, however, whether the financial

service providers concerned can meet this requirement on the basis of a reasonable investment of time and money. It goes without saying, when it comes to identifying this group of persons, that the possibilities available to a major bank operating worldwide are incomparably greater than the investigatory capabilities of a small, rural cooperative bank. Moreover, in keeping with a risk-sensitive approach this instrument can be used effectively only if it is targeted. Under these circumstances, consideration should be given to restricting the definition so that it does not simply cover all those persons entrusted with prominent public functions. It could be stipulated, for example, that enhanced customer due diligence requirements should apply as a matter of principle only to those persons entrusted with significant public functions, their immediate family members and known close associates of such persons. In addition, the requirement should cover only such persons resident in another Member State or third country. In this way, the calls made by the FATF would be met in full and the principle of non-discrimination on grounds of nationality would not be affected.

The second money laundering directive still left it up to the Member States to determine how breaches of the directive should be punished. The Commission proposal now explicitly calls for persons covered by the requirements of the directive to be held accountable for breaches of the rules to be enacted at national level. It calls specifically for **penalties** which are effective, proportionate and dissuasive.

The authorisations proposed by the Commission in connection with **implementing measures** should cover only the clarification of technical aspects of the provisions and measures to take account of technical developments in connection with the design of financial products and the combating of money laundering and terrorist financing. However, Parliament, given its role under the codecision procedure as a legislator on an equal footing with the Council, must be able, like the Council, to monitor this form of implementing legislation and, if necessary, raise objections which are then acted on.

There is general support for the political objective of combating effectively the use of the proceeds of serious crimes and of reducing international terrorists' scope for action. With that aim in view, legislative measures are needed at European level as well. If the third money laundering directive has nevertheless not met with undivided approval, it is because the supervisory mechanisms introduced by the second money laundering directive pose a threat to citizens' rights. Such measures are legitimate if their stringency is proportionate to their effectiveness. However, it has not yet been possible to give an answer to the question of how effective the second money laundering directive has proved, because not only has the requisite **assessment** not been carried out, but in some cases the directive has not even been transposed. For that reason, an urgent call should be made for an assessment of the suitability of all existing measures amenable to such appraisal at the latest two years after the entry into force of the third money laundering directive.

1.3.2005

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS(*)

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a European Parliament and Council directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Draftsman (*) : Joseph Muscat

(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

SHORT JUSTIFICATION

Your draftsman welcomes the Commission's proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing. He shares with the Commission the view that the fight against money laundering and terrorist financing should remain a top political priority and considers it to be a major challenge for the stability and reputation of Europe's financial system. In that respect, he recognises the need to implement effective measures.

In the meantime, there is concern about delay in the implementation of the second directive in some Member States : they should be encouraged to implement it quickly, notwithstanding the ongoing discussions on a new text. Though this situation makes it difficult to make a proper impact assessment of previous texts, your draftsman considers that the Commission should be encouraged to do it as soon as possible.

The strengthening of the EU's defences against money laundering and terrorist financing requires constant vigilance and a regular up-dating and improvement of measures. Indeed, the latest Recommendations of the Financial Action Task Force should be taken into account as a basis for up-dating the previous text : in particular, these Recommendations now also cover terrorist financing. The Commission proposal is the third Directive in the field of the fight against money laundering following those of 1991 and 2001 : it repeals the previous directives and proposes a new autonomous text which, amongst other issues, gives a more precise definition of money laundering.

Your draftsman supports the risk-based approach suggested by the Commission, on the basis of the new FATF Recommendations, as it appropriately justifies a focus on enhanced measures in higher risk situations while less risky situations may warrant less rigorous controls. In the meantime, it is up to the Commission, assisted by the new Committee on the Prevention of Money Laundering established by the draft directive, to ensure that these measures are implemented in a relatively harmonised way in order to avoid distortions amongst Member States.

He shares the Commission view that a number of persons, institutions and activities currently not covered by the existing texts - such as providers of services to companies, trusts, and life insurance intermediaries - should be included in the scope of the Directive. Though the implementation of numerous measures may induce stricter control and more rigorous vigilance from institutions and their staff, sometimes resulting in a disturbance of the comfort of their clients, he considers it as a necessary tool in order to combat money laundering and terrorist financing more effectively.

Finally, your draftsman considers it to be of high importance that the national financial intelligence units be given missions of equivalent importance and adequate resources, as they will have an important role to play in the framework set up in this directive and need appropriate means to fulfil their tasks.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1	
Title	
Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing.	<p>Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.</p> <p><i>(As a consequence of this amendment, the following technical changes should be made: "money laundering" should be replaced by "money laundering and terrorist financing" in recitals 10, 11, 21, 25, 26 and articles 4, 10.1(a), 10.1(c), 18, 29 and 37.1</i></p>

¹ Not yet published in OJ.

introductory part; "money laundering" should be replaced by "money laundering or terrorist financing" in recitals 13 and 22 and in articles 2.2, 3(10), 6(c), 10.3, 11, 17, 19, 21, 22, 24, 25, 26, 30, 31, 37.1(b) and 37.1(c) ; the "Committee on the Prevention of Money Laundering" should be called "Committee on the Prevention of Money Laundering and Terrorist Financing" in recital 19 and article 38).

Justification

The draftsman considers that money laundering and terrorist financing are of different nature. As a consequence terrorist financing should not be considered as a form of money laundering.

Amendment 2

Recital 4

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

(4) In order to respond to these concerns, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering was adopted. It required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities. ***Although that Directive has not been implemented yet in every Member State, an assessment of its functioning would be useful as regards the number of reports transmitted by financial and non-financial professions, collaboration between the financial intelligence units and the different professions, the follow-up operated by financial intelligence units and the number of cases subsequently brought before the courts, so as to evaluate the effectiveness and the efficiency of EU legislation.***

Justification

As a general principle, any new EU legislation should be based on a comprehensive assessment of the previous texts when implemented. We included in our amendment the difference between financial and non-financial professions since the tightening of controls in the financial sector had prompted money launderers to seek alternative laundering methods. We would like to see investigated the effectiveness of the articles on non-financial professions in the money laundering directives.

Amendment 3 Recital 4 a (new)

(4 a) Despite the broadly shared objective of combating money laundering and terrorist financing, delays are still observed in the implementation of EU directives or Financial Action Task Force on Money Laundering (hereinafter referred to as the "FATF") recommendations. Member States should implement rapidly the related instruments already in place in order to avoid any distortions and to fight efficiently against organised crime.

Justification

Delays in the implementation of the agreed text may not only generate distortion among Member States but also create loopholes facilitating money laundering.

Amendment 4 Recital 5

(5) Money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the Forty Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the

(5) Money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora, ***and the Community should ensure that third countries taking part in the work of the FATF also implement the FATF recommendations in their national legislation.*** The Community

"FATF"), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Forty Recommendations were substantially revised and expanded in 2003, the Community Directive should be brought into line with this new international standard.

action should continue to take particular account of the Forty Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the "FATF"), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Forty Recommendations were substantially revised and expanded in 2003, **and new Specific Recommendations on terrorist financing adopted**, the Community Directive should be brought into line with this new international standard.

Amendment 5
Recital 8

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

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

Justification

Cf justification for amendment 1

Amendment 6
Recital 8 a (new)

(8a) The general obligation to adopt effective, proportionate and dissuasive sanctions, combined with the criminalisation obligation of Article 1, means that ***criminal*** sanctions should apply to natural persons who infringe obligations on customer

(8a) The general obligation to adopt effective, proportionate and dissuasive sanctions, combined with the criminalisation obligation of Article 1, means that ***appropriate*** sanctions should apply to natural persons who infringe obligations on

identification, record-keeping and reporting of suspicious transactions for the purpose of money laundering, since such persons have to be regarded as participating in the money laundering activity.

customer identification, record-keeping and reporting of suspicious transactions for the purpose of money laundering, since such persons have to be regarded as participating in the money laundering activity.

Justification

Il serait davantage approprié de se baser sur la recommandation 17 du GAFI qui propose que, pour les cas d'infraction aux obligations de lutte contre le blanchiment, les Etats membres devraient disposer de sanctions proportionnées et dissuasives, qu'elles soient pénales, civiles ou administratives. Conformément au principe de subsidiarité, le choix ultime devrait dépendre du système juridique de chaque Etat membre.

Amendment 7 Recital 19

(19) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of the above Council Decision, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision. To that end a new Committee on the Prevention of Money Laundering, replacing the Money Laundering Contact Committee set up by Directive 91/308/EEC, should be established.

(19) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of the above Council Decision, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision. To that end a new Committee on the Prevention of Money Laundering, replacing the Money Laundering Contact Committee set up by Directive 91/308/EEC, should be established. ***In exercising its implementing powers under this Directive, the Commission should respect the following principles: the need to ensure a high level of transparency and broad consultation with institutions and persons covered by this Directive and with the European Parliament and the Council; the need to ensure that the competent authorities are able to ensure compliance with the rules in a consistent manner; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to ensure the necessary degree of flexibility in the application of the implementing measures in the light of a risk assessment; the need to ensure consistency with other EU legislation in***

this area and the need to protect the EU, its Member States and citizens from the consequences of money laundering and terrorist financing.

Justification

Afin de prévenir toute inflation réglementaire dans l'adoption de mesures d'exécution par la Commission, la directive doit garantir que les institutions et personnes concernées soient consultées de manière appropriée. La Commission devrait aussi veiller à l'équilibre des coûts et bénéfices des institutions et personnes relevant de la directive.

Amendment 8
Recital 29 a (new)

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

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

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

(iii) foundation, legal arrangement or trust required by the law of any Member State for the joint ownership of property.

Justification

Most corporate debt issues managed by EU based institutions are held on trust. They have therefore been included in the Directive accidentally because of its extension to trustees. However, this was not the intention of the drafters as any money laundering risk in this area is already managed by the financial services regulation which should not be duplicated. Without this amendment, the Directive could be highly disruptive to bond markets in the EU. The Directive extends money laundering requirements to trusts. Trusts frequently arise automatically on death in the UK and Ireland. For example, on a death where no will is left, trusts are imposed by statute as a matter of English law. Succession arrangements in other Member States are not covered by the proposed new directive and this clarification ensures the UK and Ireland are treated in the same way as other Member States. The Directive extends money laundering requirements to trusts. Trusts are a mandatory feature of the joint ownership of land in England and Ireland. These joint ownership trusts should be excluded from the Directive. The Directive does not cover joint ownership situations in the rest of Europe. This clarification brings the UK and Ireland into line with

other Member States. A purchase or sale of land will already be subject to existing anti money laundering controls.

Amendment 9
Article 1, paragraph 1

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

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

Justification

Considering the scope of the directive, your Draftsman considers it appropriate to specify that terrorist financing is a criminal offence as well as money laundering.

Amendment 10
Article 1, paragraph 2, point (d)

(d) the provision or collection of lawful property, by any means, with the intention that it should be used, in full or in part, for terrorism.

deleted

Justification

As money laundering and terrorist financing are of different nature, the draftsman believes that terrorist financing should be mentioned in a separate subparagraph of this article. (cf amendment 1).

Amendment 11
Article 1, paragraph 2, subparagraph 2

Knowledge, intent or purpose required as an element of the activities referred to in the first subparagraph may be inferred from objective factual circumstances.

deleted

Justification

This sentence, which applies to both money laundering and terrorist financing, should be put at the end of the article.

Amendment 12
Article 1, paragraph 2, subparagraph 2 a (new)

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

Justification

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

Amendment 13
Article 1, paragraph 2 a (new)

2a. For the purposes of this Directive, “terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences referred to in Articles 1 to 4 of Council Framework Decision 2002/475/JHA.

Justification

As for money laundering, there is a need for a separate definition of terrorist financing.

Amendment 14
Article 1, paragraph 2b (new)

2b. Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs 2 and 2a may be inferred from objective factual circumstances.

Justification

Cf. supra.

Amendment 15
Article 3, point (4)

**(4) "terrorism" means any of the offences ~~deleted~~
within the meaning of Articles 1 to 4 of
Council Framework Decision
2002/475/JHA¹.**

¹ OJ L 164, 22.6.2002, p. 3.

Justification

This paragraph would be redundant with the definition to be given in article 1.

Amendment 16
Article 3, point (8), point (a)

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

(a) in the case of corporations

**(i) the natural person or persons who is or
are ultimately the owner or owners of a
legal person by directly or indirectly
holding a sufficient proportion of shares or
voting rights of that legal person, including
through the holding of bearer shares, or
who in this way ultimately controls or
control such a legal person, other than a
company listed on a regulated market that
is subject to disclosure requirements in
accordance with Community legislation or
subject to equivalent international
standards; a share of 25% plus one share
shall be deemed sufficient to meet this**

criteria;

(ii) the natural person or natural persons who controls or control the senior management of a legal person in any other way;

Justification

Dieser Text entspricht dem schwierigen Kompromiß innerhalb des Rates. Er macht die Erfüllung dieser Verpflichtung praktikabler und dient zur zügigen Annahme der Richtlinie in erster Lesung.

Amendment 17

Article 3, point (8), point (b)

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

(b) in the case of legal persons, for example foundations and legal arrangements, for example trusts which manage or distribute money:

(i) in so far as the future beneficiaries have already been designated, the natural person or persons who is or are the beneficiary or beneficiaries of at least 25% plus one share of the property of a legal arrangement or legal person;

(ii) in so far as the individual persons who are the beneficiaries of the legal person or legal arrangement have not yet been designated, the group of persons in whose interests the legal person was primarily established or the legal arrangement takes effect;

(iii) the natural person or persons who exercises or exercise essential control over at least 25% plus one share of the property of a legal arrangement or legal person;

Justification

Dieser Text entspricht dem schwierigen Kompromiß innerhalb des Rates. Er macht die Erfüllung dieser Verpflichtung praktikabler und dient zur zügigen Annahme der Richtlinie in erster Lesung.

Amendment 18 Article 3, point (10)

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

(10) ‘politically exposed persons’ means natural persons **who are not citizens of the European Union and** who are or have been entrusted with prominent public functions, **for example Heads of State or Government, prominent politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials and close family members or close associates of such persons** and whose substantial or complex financial or business transactions may represent an enhanced money laundering risk;

Justification

La définition de personnes politiquement exposées est trop vague et est en contradiction avec une approche basée sur la notion de risque. L’Union européenne devrait être considérée comme une juridiction unique et les personnes politiquement exposées d’Etats membres devraient être exclues de cette définition, étant donné que les établissements de crédit appliquent déjà des procédures de vigilance. La définition des personnes politiquement exposées devrait être limitée aux personnes de pays tiers ayant une fonction publique importante.

En outre, il convient de rétablir la condition cumulative sans laquelle le texte viserait sans distinction toutes les personnes ayant une fonction publique, ce qui serait manifestement excessif.

Amendment 19 Article 3, paragraph 1 a (new)

Nothing in this Directive shall require the identification or verification of beneficial ownership of property (‘the property’) comprising

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

exchange;

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

Justification

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

Amendment 20

Article 3, paragraph 1 b (new)

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

Justification

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

Amendment 21
Article 6, point (d)

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

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

Justification

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

Amendment 22
Article 7, paragraph 1, point (b)

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

(b) identifying, where ***practicable, on the basis of publicly accessible and reliable independent source documents, data or information*** the beneficial owner and taking ***risk-based and*** reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking ***risk-based and*** reasonable measures to understand the ownership and control structure of the customer; ***where the customer is a properly constituted company registered in a jurisdiction which is regarded as low-risk, and absent any other significant risk factors, reasonable evidence of the company's registration from an independent source shall constitute reasonable measures;***

Justification

This amendment had 3 aims: (i) Some trusts are set up to benefit a class of beneficiaries which may not all be identifiable at the start of the arrangement e.g. the descendants of an individual or the employees of a company. It is not possible to carry out money laundering checks on people who might not yet have been identified (or even born!). (ii) Identity checks should also be risk-based, with stricter checks being justified in cases of higher risk. (iii) The

extent to which corporate entities need verification beyond that which is publicly available from public records should be restricted to companies registered in or with material links to higher risk jurisdictions which do not meet acceptable standards.

Amendment 23

Article 7, paragraph 1, point (b a) (new)

(ba) In the absence of a record of owners or a legal obligation to declare beneficial ownership, this duty shall be regarded as discharged when publicly available sources of information have been consulted, reasonable questioning of the customer conducted, and a judgement made in good faith taking account of the perceived risk. Liability shall only arise in the case of blatant and obvious omissions in identification efforts;

Justification

It is unreasonable to impose a strict duty in the absence of a register of ownership or a legal obligation to declare beneficial ownership.

Amendment 24

Article 7, paragraph 1, point (d)

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

(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.

Justification

The expression 'due diligence' implies a formal and expensive process, while 'monitoring' is rather less formal but quite adequate. In particular it is a more appropriate approach for SMEs.

Amendment 25
Article 8, paragraph 1

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

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

1a. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary 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 should be completed as soon as practicable after the initial contact.

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

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

(ii) trusts, created within a Member State

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

(b) the trustees remain so resident

allow the verification of the identity of the beneficiaries of the trust to take place after having established the business relationship. In all such cases verification by the trustees need only take place at or

before the time of distribution to that beneficiary and Member States may permit the need for third party identification and verification to be dispensed with on a risk based approach.

Justification

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

Amendment 26 Article 8, paragraph 2

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

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

Member States shall not apply this provision to notaries, independent legal professionals, auditors, external accountants and tax advisers in the course of ascertaining the legal position of their client or performing their task of defending

or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

Justification

Mit dem Verweis auf die Verfügungsmöglichkeit wird diese Verpflichtung praktikabler. Der letzte Absatz dient der Klarstellung hinsichtlich der Verpflichteten im Rahmen der Rechtsberatung.

Amendment 27
Article 8, paragraph 3

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

3. Member States shall require that institutions and persons covered by this Directive apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers ***whose data have been obtained after the entry into force of this Directive*** on a risk-sensitive basis.

Justification

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

Amendment 28
Article 9, paragraph 1

1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of ***EUR 1000*** or more.

1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of ***EUR 3000*** or more.

Justification

The draftsman considers that there is no reason to go beyond what was suggested by the FATF and that too low a threshold may considerably hamper casinos' business without any peculiar justification.

Amendment 29
Article 10, paragraph 3, point (d a) (new)

(da) insurance policy premiums for accidents or accidental damage to real assets, where the value of such assets is vouched to be realistic on the basis of cost or professional valuation.

Justification

Insurance policies for accidents carry a very low money laundering risk.

Amendment 30
Article 10, paragraph 3, point (d b) (new)

(db) credit agreements in which the credit account serves exclusively to settle the loan and the repayment of the loan is effected from an account which was opened in the name of the customer with a credit institution subject to this Directive pursuant to Article 7(1)(a) to (c).

Amendment 31
Article 11, paragraph 1, subparagraph 2, point (a)

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

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

Justification

Requiring additional documentary evidence increases the administrative burden. Lenders should be allowed to accept other data or information allowing them to verify identity by electronic means.

Amendment 32
Article 11, paragraph 1, subparagraph 3, introductory part

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

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

Amendment 33
Article 11, paragraph 1, subparagraph 4, point (a)

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

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

Justification

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

Amendment 34
Article 11, paragraph 1, subparagraph 4, point(b)

(b) have senior management approval for establishing business relationships with such customers;

deleted

Justification

Das Zustimmungserfordernis der Bank-Geschäftsleitung zum Geschäftsabschluss mit PEPs ist nicht nachvollziehbar.

Amendment 35
Article 11, paragraph 2

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

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

Justification

La proposition de la Commission interdit aux établissements de crédit d'entrer en relation ou de continuer une relation avec un correspondant bancaire qui accepte que ses comptes soient utilisés par des banques fictives (c'est à dire une relation indirecte avec une banque fictive). Ceci ne peut être appliqué en pratique car les banques devraient avoir des moyens mis en place pour vérifier que ses correspondants bancaires ont des relations avec des banques fictives. Une obligation de connaître « le client de son client » n'est pas gérable, que le client soit un autre établissement de crédit, une entité juridique ou une personne physique. Cette disposition est inapplicable.

Amendment 36
Article 12, paragraph 2

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

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

Justification

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

Amendment 37
Article 12 a (new)

Article 12a

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

Justification

There is currently no consistency in the way that each Member State is enacting the 2nd Money Laundering Directive (Member States have differing prescriptive documentary requirements regarding client identification). This failure is resulting in additional costs to customers and regulated businesses and hindering business in the EU at a practical level, as well as giving an unfair advantage to one state at the expense of another, depending on how different the level of requirements might be.

Amendment 38
Article 14, paragraph 2

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

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

Justification

Les établissements de crédit ne conservent plus des dossiers physiques à l'heure de la numérisation croissante de la société. Seuls des dossiers électroniques sont conservés. L'expression « Une copie adéquate des données d'identification et de vérification » pourrait empêcher cette pratique. L'article 7 de la directive n'oblige pourtant pas les banques à conserver une copie physique des documents d'identité. Ce qui est essentiel, ce sont les données de vérification ou le document d'identification ou une copie du document d'identification

Amendment 39
Article 15

Each Member State shall in any case permit its institutions and persons referred to in Article 2 (1), (2) and (3) points (a) to **(d)** to recognise and accept the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by an institution or person referred to in Article 2 (1), (2) and (3) points (a) to **(d)** in another Member State and meeting the requirements laid down in Articles 12, 13 and 14, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

Each Member State shall in any case permit its institutions and persons referred to in Article 2 (1), (2) and (3) points (a) to **(f)** to recognise and accept the outcome of the customer due diligence procedures laid down in Article 7(1)(a) to (c), carried out in accordance with this Directive by an institution or person referred to in Article 2 (1), (2) and (3) points (a) to **(f)** in another Member State and meeting the requirements laid down in Articles 12, 13 and 14, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

Justification

Reputable real estate agents and persons trading in goods or providing services for high value cash payments of EUR 15 000 or more should be able to benefit from the mutual recognition of due diligence procedures.

Amendment 40
Article 16

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

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

Articles 13 to 15 of this Directive shall not apply if an agency relationship exists between institutions or persons covered by this Directive and third parties regarding the fulfilment of the obligations resulting from Article 7(1)(a) to (c) where on the basis of a contractual arrangement the agent is to be regarded as synonymous with the institution or person covered by this Directive with regard to customer due diligence procedures.

Amendment 41
Article 18, paragraph 2

That financial intelligence unit shall be established as a central national unit, ***with adequate resources***. It shall be responsible for receiving, ***and, to the extent permitted, for*** requesting, analysing and disseminating to the competent authorities, disclosures or financial information which concern suspected proceeds of crime or which are required by national legislation or regulation.

That financial intelligence unit shall be established as a central national unit. It shall be responsible for receiving, requesting, analysing and disseminating to the competent authorities, disclosures or financial information which concern suspected proceeds of crime or which are required by national legislation or regulation. ***It shall be provided with adequate resources in order to fulfil its missions.***

Justification

The draftsman considers that national financial intelligence units, which are at the centre of the system must have appropriate resources and be granted the same range of missions in order to allow them to work efficiently.

Amendment 42
Article 18, paragraph 2 a (new)

The adequate resources provided by Member States to the financial intelligence unit shall allow it to provide the institutions

and persons covered by this Directive with timely and specific feedback on the effectiveness of and follow-up to reports of suspected money laundering transactions.

Justification

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

Amendment 43 Article 20, paragraph 2

2. Member States shall not ***be obliged to*** apply the obligations laid down in Article 19(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

2. Member States shall not apply the obligations laid down in Article 19(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Amendment 44 Article 21

Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have ***informed the financial intelligence unit.***

The financial intelligence unit may, under conditions to be determined by the national legislation, give instructions not to execute

Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering ***or terrorist financing*** until they have ***complied with Article 19(1)(a).***

In accordance with the legal provisions of the Member States, instructions may be given not to execute the operation.

the operation.

Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the institutions and persons concerned shall apprise the financial intelligence unit *immediately afterwards*.

Where such a transaction is suspected of giving rise to money laundering *or terrorist financing* and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation *or terrorist financing*, the institutions and persons concerned shall apprise the financial intelligence unit *of the necessary information*.

Justification

Dieser Text entspricht dem schwierigen Kompromiß innerhalb des Rates. Er dient zur zügigen Annahme der Richtlinie in erster Lesung.

Amendment 45 Article 23

The disclosure in accordance with the requirements of this Directive to the financial intelligence unit by an institution or person covered by this Directive or by an employee or director of such an institution or person of the information referred to in Articles 19,20 and 21 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

The disclosure in accordance with the requirements of this Directive to the financial intelligence unit by an institution or person covered by this Directive or by an employee or director of such an institution or person of the information referred to in Articles 19,20 and 21 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind, *provided that they act in good faith*.

Justification

The draftsman considers that undue disclosure should not be encouraged by too large an exemption of responsibility.

Amendment 46 Article 24

Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering either internally or to the

Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering either internally or to the

financial intelligence unit from being exposed to threats or hostile action.

financial intelligence unit from being exposed to threats or hostile action ***by way of reprisals.***

Justification

Pour assurer une lutte efficace contre le blanchiment, il est nécessaire de protéger les employés des établissements de toute menace ou action hostile de représailles.

Amendment 47
Article 25, paragraph 1

The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles 19, 21, 21 or that a money laundering investigation is being or may be carried out.

1. The institutions and persons - with the exception of the internal controls in financial institution groups - covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles 19, 21, 21 or that a money laundering investigation is being or may be carried out. In financial multinational groups the restricted circulation of the names of suspicious persons among the compliance officers of the financial group is permitted within the sufficient protection mechanism.

2. The prohibition laid down in paragraph 1 shall not include disclosure to judicial authorities or disclosure for law enforcement purposes if provided for in national legislation.

3. Where independent legal professionals, notaries, auditors, accountants and tax advisors, acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this shall not constitute disclosure within the meaning of paragraph 1.

Justification

According to the amendment the circulation of data among the compliance officers in the chain of banks and other financial institutions can be allowed, but the safeguard of the good reputation of the clients in the course of the procedure should be by all means secured.

Amendment 48
Article 29, paragraph 2 a (new)

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

Justification

Les statistiques sur le nombre d'affaires instruites, de personnes poursuivies et de personnes condamnées pour blanchiment de capitaux à la suite de déclarations de soupçons doivent être améliorées. Dans ce contexte, les statistiques doivent couvrir non seulement le nombre de déclarations de transactions suspectes mais aussi le suivi donné à ces déclarations, le nombre d'affaires instruites ainsi que le nombre de personnes poursuivies et condamnées.

Amendment 49
Article 29 a (new)

Article 29 a

Member States shall apply the derogation provided for in Article 13(1)(d) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ when such derogation constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences related to money laundering.

¹ OJ L 281, 23.11.1995, p. 31.

Justification

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

Amendment 50
Article 31, paragraph 3

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

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

Justification

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

Amendment 51
Article 37, paragraph 3 a (new)

3a. In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European Parliament and the Council; the need to ensure that competent authorities are able to ensure consistent compliance with the rules; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to respect the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive basis approach; the need to ensure coherence with other EU legislation in this area; the need to protect the EU, its Member States and their citizens from the consequences of money laundering and terrorist financing.

Justification

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

PROCEDURE

Title	Proposal for a European Parliament and Council directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing			
References	COM(2004)0448 - C6-0143/2004 - 2004/0137(COD)			
Committee responsible	LIBE			
Committee asked for its opinion Date announced in plenary	ECON 10.3.2005			
Enhanced cooperation	Yes			
Drafts(wo)man Date appointed	Joseph Muscat 10.11.2004			
Discussed in committee	22.10.2004	10.11.2004	18.1.2005	2.2.2005
Date suggestions adopted	22.2.2005			
Result of final vote	for: 22 against: 0 abstentions: 22			
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Udo Bullmann, Ieke van den Burg, Paolo Cirino Pomicino, Jillian Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Christopher Huhne, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Guntars Krasts, Astrid Lulling, Hans-Peter Martin, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Karin Riis-Jørgensen, Eoin Ryan, Manuel António dos Santos, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht			
Substitutes present for the final vote	Jan Andersson, Jana Bobošíková, Harald Ettl, Satu Hassi, Ján Hudacký, Werner Langen, Sarah Ludford, Vladimír Maňka, Diamanto Manolakou, Andreas Schwab, Theresa Villiers			
Substitutes under Rule 178(2) present for the final vote	Rosa Díez González			

18.3.2005

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
(COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Draftsman: Phillip Whitehead

SHORT JUSTIFICATION

Your draftsman welcomes the Commission's proposal, which attempts to address the problem of money laundering.

Money laundering is a crime that can have serious consequences, both in terms of physical security (such as acts of terrorism) and in terms of consumer protection and the proper functioning of the Internal Market. It should be combated using every possible means; however, this must be done in an appropriate and proportionate way. Necessity and proportionality should be the guiding principles for European legislation on money laundering, and therefore your draftsman:

- welcomes the risk-based approach the Commission has chosen for the due diligence obligation, since it allows for greater flexibility and reflects the breadth of the sectors affected by the legislation. This 'staged' approach, which differentiates between general, simplified and enhanced due diligence, helps to ensure that the consumer's access to goods and services, and the functioning of the Internal Market, are only impeded when there is due suspicion of money laundering.
- endorses that approach whereby the customer due diligence and record-keeping requirements, set out in this directive, should also apply to non-financial businesses and professions - especially casinos - when customers engage in financial transactions exceeding a specific threshold. However, according to the recommendations of the

'Financial Action Task Force on Money Laundering' (FATF)¹ the thresholds should be set at a higher level.

- agrees that financial transactions coming within the scope of insurance contracts should also be scrutinised. However, the threshold in terms of life insurance is considered to be too low and should be changed, as setting it at a low level would impose an intolerable burden on the insurance industry in terms of the deployment of human resources. In the interests of relieving the burden on providers of other types of insurance (such as car insurance and household contents insurance), and the purchasers of such services, provision should also be made for a system of 'verification upon claim', rather than performing checks on potential clients before a policy is issued.
- urges the Commission to reconsider the definition of beneficial owner for the purpose of determining. The proposal's 10% ownership or control threshold of beneficial owners is overly ambitious and would lead to unnecessary and onerous checks being carried out on individuals who do not have legal control over the company in question.
- requests the Commission to set out rules determining how the discretion associated with the due diligence process should be exercised in practice.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Article 3, point 8, point (a)

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

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

¹ http://www1.oecd.org/fatf/40Recs_en.htm.

¹ — Not yet published in OJ.

Justification

The 10% barrier is regarded as being too small. Real influence on a company can only be established from controlling one-third or more of shares or of voting rights.

Amendment 2

Article 3, point 8, point (b)

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

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

Justification

The 10% barrier is regarded as being too small. Real influence on a company can only be established from controlling one-third or more of shares or of voting rights.

Amendment 3

Article 3, point 10

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

(10) “politically exposed persons” ***(PEPs) are individuals*** who are or have been entrusted with prominent public functions, ***such as Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, but not middle ranking or more junior individuals. Business relationships with family members or close associates of PEPs involve reputational risks similar to those inherent in such relationships with PEPs themselves.***

Justification

The definition by the FATF (Financial Action Task Force on Money Laundering) on PEPs is more precise than the Commission's definition.

Amendment 4
Article 5

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts, anonymous passbooks **or accounts in fictitious names.**

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts **or** anonymous passbooks. **All accounts held in a name other than the legal name of the holder shall be subject to customer due diligence.**

Justification

The requirement does not take account of those people who may use professional names, including noms de plume. The key requirement is that the identity of the individual is known to the credit institution or financial institution, albeit with additional checks in the event of a customer using a name other than his legal name.

Amendment 5
Article 8, paragraph 3 a (new)

3a. Exceptionally, in the case of insurance premium funding, customer due diligence should be applied only when a claim is made, not when the policy is sold.

Justification

There is a low money-laundering risk on the sale of home, motor and business insurance policies; it is more effective to act on any suspicions at the point when the claim is made. The original wording presents a potential obstacle to the functioning of the internal market and to consumer access to insurance.

Amendment 6
Article 9, paragraph 1

Member States shall require that all casino customers shall be identified and **the** identity verified if they **purchase or** exchange gambling chips with a value of **EUR 1000** or more.

Member States shall require that all casino customers shall be identified and **their** identity verified if they exchange gambling chips with a value of **EUR 3000** or more.

Justification

The threshold for triggering control and investigation procedures is set at EUR 15,000 for all professions and activities with the exception of casinos, where the threshold is set at a disproportionately low level of EUR 1,000. The amendment seeks to raise the threshold to EUR 3,000, in line with the 40 Recommendations of the international Financial Action Task Force, in order that the fight against money laundering is better focused. The amendment further seeks to apply customer due diligence procedures at the stage where the customer cashes out of the casino, since this is the critical point in the process to combat money laundering.

Amendment 7
Article 10, paragraph 3, point (a)

(a) life insurance policies where the annual premium is no more than **EUR 1000** or the single premium is no more than **EUR 2500**;

(a) life insurance policies where the annual premium is not more than **EUR 3000** or the single premium is not more than **EUR 7500**;

Justification

Such a low threshold would discriminate unduly against older consumers who would have to pay larger amounts for life insurance.

Amendment 8
Article 11, paragraph 1, point (a)

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

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

Justification

Financial institutions and credit institutions in many parts of the EU have invested in the development of sophisticated electronic verification systems and processes here is a low money-laundering risk on the sale of home, motor and business insurance policies; it is more effective to act on any suspicions at the point when the claim is made. The original wording presents a potential obstacle to the functioning of the internal market and to consumer access to insurance.

Amendment 9
Article 16

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

Articles 13 to 15 of this Directive shall not apply ***to any agency relationship between institutions or persons covered by this Directive and third parties regarding fulfilment of the obligations arising from***

covered by this Directive.

Article 7(1)(a), (b) and (c) where on the basis of a contractual arrangement the outsourcing service provider or agent is to be regarded as synonymous with the institution or person covered by this Directive.

Justification

Article 13 requires that third parties are equivalent to those listed in Article 2. However, some undertakings, such as motor dealers and other retailers, act in some Member States as agents to lenders and obtain the evidence on their behalf. Whilst the ultimate responsibility rests with the lender, the agent can carry out basic checks such as verifying photographic identity. This amendment, therefore, would expedite identity checks and remove a disproportionate barrier to the functioning of the Internal Market.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
References	COM(2004)0448 – C6-0143/2004 – 2004/0137(COD)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	IMCO 27.10.2004
Enhanced cooperation	No
Draftsman Date appointed	Phillip Whitehead 30.11.2004
Discussed in committee	18.1.2005 15.3.2005
Date amendments adopted	16.3.2005
Result of final vote	for: 34 against: 0 abstentions: 0
Members present for the final vote	Charlotte Cederschiöld, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Edit Herczog, Anneli Jäätteenmäki, Henrik Dam Kristensen, Alexander Lambsdorff, Kurt Lechner, Lasse Lehtinen, Toine Manders, Manuel Medina Ortega, Zita Pleštinská, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Andreas Schwab, Heide Rühle, Leopold Józef Rutowicz, József Szájer, Jacques Toubon, Barbara Weiler, Phillip Whitehead
Substitutes present for the final vote	Jean-Claude Fruteau, Benoît Hamon, Bogusław Liberadzki, Joseph Muscat, José Ribeiro e Castro, Alexander Stubb
Substitutes under Rule 178(2) present for the final vote	Claire Gibault, Anja Weisgerber

8.3.2005

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
(COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Draftswoman: Diana Wallis

SHORT JUSTIFICATION

The Commission's proposal for a directive of the European Parliament and of the Council on the prevention of the use of financial system for the purpose of money laundering, including terrorist financing is the third Directive in this field following those of 1999 and 2001. This directive comes against an international backdrop of concern about terrorism and its financing; accordingly the political imperative for further legislation is strong. In this respect it is entirely regrettable that the second directive has only recently been implemented in some Member States, with the Commission still having to take enforcement action against one Member State. In these circumstances there has been little or no opportunity to properly reflect on and or examine the effectiveness of the earlier legislation.

The motives for a further directive are clearly the wish to deal effectively with the financing of terrorist activities and to respond to the latest recommendations of the FATF. Your draftsman acknowledges the need to strengthen EU legislation in this respect and welcomes the extension of the scope of the directive to all service providers dealing with corporate and trust matters, omitted from the 2001 directive and identified by FATF as being vulnerable to money laundering.

However the proposed Directive again deals with the position of legal professionals in respect of whom the Commission has not, it appears, taken steps to carry out the review provided for by Article 2 of the 2001 directive in relation to the specific treatment of lawyers and other independent legal professionals. This failure combined with the lack of any legislative impact assessment of the proposal or analysis of the effectiveness of the earlier two directives raises serious concerns about process. In addition to which this proposal is now subject to the co-decision procedure and a political agreement has been reached without awaiting the Parliament's opinion.

Your rapporteur feels that these problems about process are compounded by the serious constitutional and fundamental rights issues which have been raised in some jurisdictions about the extent to which legal professionals should be covered by anti-money laundering legislation, having regard to the lawyer-client confidentiality principle. Your draftsman would urge caution with regard to further immediate legislation in this particular area covered by the proposal, given the uncertainty of the current legal and constitutional situation. Obligations arising from the second directive are being challenged through the courts by Bar Associations in both Belgium and Poland. There are also outstanding legal cases with regard to issues surrounding legal professionals in other Member States. It is also noted that in Canada, a FATF country, members of the legal profession have been excluded from the scope of similar anti-money laundering legislation pursuant to the ongoing constitutional challenge by their Bar Association and Law Societies. Indeed, it is noteworthy that despite its active stance against terrorism the USA has so far not felt it appropriate to impose reporting obligations on legal professionals mainly as a result of representations from the American Bar Association raising constitutional issues. Regard should also be had to the petition presented to the Petitions Committee of the European Parliament by a number of Member State bar associations (petition 693/2003).

In this situation extreme care needs to be taken in respect of the position of legal professionals and amendments are proposed by your rapporteur accordingly. Further, in order to keep this area under tight review amendments are also proposed to the activities of the Money Laundering Committee and to the Final Provisions.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1	
Title	
Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing	Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

¹ Not yet published in OJ.

Justification

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

Amendment 2

Recital 4

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

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

Amendment 3
Recital 8

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

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

Justification

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

Amendment 4
Recital 8a

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

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

Justification

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

Amendment 5
Recital 10

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

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

Justification

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

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

Amendment 6
Recital 12

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

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

Justification

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

Amendment 7

Recital 13

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

(13) Where independent members of professions providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate under the Directive to put these legal professionals in respect of these activities under an obligation to report suspicions of money laundering. There ***must*** be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client. Thus, legal advice ***remains*** subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering activities, the legal advice is provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes ***and fails to refrain from giving advice as the client’s lawyer. It should be ensured that these provisions are monitored for compliance with the principle of respect for fundamental rights as set out in the Charter of Fundamental Rights and in accordance with the European Parliament’s recommendation of 14 October 2004.***

Justification

Recital 12 claims that the coverage in respect of legal professionals should be ‘maintained unchanged’; if this is indeed to be the case the wording should be exactly the same as in the previous directives rather than appearing to introduce changes which soften the protection of legal professional privilege.

In its report (A6-0010/2004) adopted in the plenary by the European Parliament on 14 October 2004, (P6_TA(2004)0022) the Parliament recommended that, when defining the area of justice, security and freedom, the European Council and the Council should base their actions, among other things, on 'promoting fundamental rights and freedoms through policies linked to the area of freedom, security and justice'. The list of detailed actions under this criterion includes the following: 'calling for prior monitoring for respect for fundamental rights (as laid down by the Charter of Fundamental Rights of the Union) of any legislative act of the Union or of the Community'.

Amendment 8
Recital 19 a (new)

(19a) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European Parliament and the Council; the need to ensure that competent authorities will be able to ensure compliance with the rules consistently; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to maintain the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive basic approach; the need to ensure coherence with other EU legislation in this area; and the need to protect the European Union, its Member States and their citizens from the consequences of money laundering and terrorist financing.

Justification

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

Amendment 9
Recital 29 a (new)

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

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

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

(iii) a foundation, legal arrangement or trust required by the law of any Member State for the joint ownership of property,

Justification

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

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

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

Amendment 10
Article 1, paragraph 1

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

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

Justification

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

Amendment 11

Article 1, paragraph 2, subparagraph 1, point (d)

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

Justification

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

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

Amendment 12

Article 1, paragraph 2 a (new)

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

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

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

Justification

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

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

Amendment 13
Article 1, paragraph 2 b (new)

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

Justification

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

Amendment 14
Article 2, paragraph 1, point (3), point (b), introductory part

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

(b) notaries and other independent legal professionals, ***whenever payment is made in cash and in an amount of EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked, but only*** when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of ***financial*** transactions for their client concerning the:

Justification

The amendment brings notaries and legal professionals into line with the generality of service providers.

Amendment 15
Article 2, paragraph 2

2. Member States may decide not to apply this Directive in the case of financial institutions which engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering occurring.

2. Member States may decide not to apply this Directive in the case of financial institutions which engage in a financial activity, ***or notaries and other independent legal professionals who engage in an activity listed in Article 2(1)(3)(b)(i) to (v),*** on an occasional or very limited basis and where there is little risk of money laundering occurring.

Justification

In order to place legal professionals on an equal footing with financial institutions Member States should be able to decide not to apply the Directive to legal professionals who are engaged in the activities mentioned in Article 2(1) only on an occasional or limited basis and where there is little risk of money laundering.

Amendment 16
Article 2, paragraph 2 a (new)

2a. Member States shall not apply this Directive to notaries and other independent legal professionals in the exercise of their professional activity where the same is subject to professional secrecy or legal professional privilege, in particular when they obtain information in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in or in relation to judicial, administrative, arbitration or mediation proceedings, including advising on the institution or avoidance of such proceedings, whether such information is received or obtained before, during or after such proceedings.

Justification

The ambit of the third Directive is strictly limited to lawyers as natural persons when they are acting for their client or when assisting him/her in the planning or execution of transactions concerning five definite items (Article 2(1)(3)(b)). Therefore, lawyers should not be subject to due diligence or reporting of suspicious transactions falling outside the above-mentioned ambit of the provision.

In addition, since one of the reasons advanced to justify the 3rd Directive is to bring EU legislation into line with the Forty Recommendations of the Financial Action Task Force (FATF) on Money Laundering certain words need to be added to properly bring the directive into line with these Recommendations.

The amended wording of Article 20(2) has been moved to Article 2 because it is felt to be confusing to have the ambit of lawyers' reporting duties in two different places in the Directive.

Amendment 17
Article 3, point 7, point (f)

(f) all offences 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.

(f) all offences which ***fall within the ambit of (a) to (e) above and*** 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.

Justification

The current proposed definition of a serious crime founded on the length of the sentence of imprisonment is unworkable on an EU-wide basis and will not provide an appropriate level of harmonisation or application of the directive. In addition the widening of the scope in the manner proposed would potentially overwhelm the system. The amendment seeks to concentrate on the key offences likely to be related to money laundering.

Amendment 18
Article 3, point 8, point (a)

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

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

Justification

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

Amendment 19 Article 3, point 8, point (b)

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

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

Justification

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

Amendment 20 Article 3, point 10

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

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

Amendment 21
Article 3, point 11

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

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

Justification

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

Amendment 22
Article 3, point 12 a (new)

(12a) ‘independent legal professional’ means a member of a legally recognised profession which provides legal advice and is supervised by an independent self-regulating body with disciplinary powers.

Justification

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

Amendment 23
Article 3, paragraph 1 a (new)

Nothing in this Directive shall require the identification or verification of beneficial ownership of property (‘the property’) comprising

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

(ii) equities listed on a regulated exchange, by a person holding the property in a pooled account on behalf of another

financial institution acting as a depository institution.

Justification

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

Amendment 24
Article 3, paragraph 1 b (new)

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

Justification

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

Amendment 25
Article 4

<i>The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering.</i>	<i>deleted</i>
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Justification

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

Amendment 26 Article 6, point (d)

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

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

Justification

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

Amendment 27 Article 7, paragraph 1, point (b)

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

(b) identifying, where ***practicable, on the basis of independent, reliable and publicly accessible sources of information, data and documents***, the beneficial owner and taking reasonable measures, ***based on differing risk situations***, to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking ***risk-based*** reasonable measures to understand the ownership and control structure of the customer; ***the due diligence procedure shall be deemed to have been carried out when the power to represent the client has been ascertained, this taking the form of formal representation, duly conferred, or of legal representation of natural persons, companies, institutions and organisations of all kinds;***

Justification

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

Amendment 28

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

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

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

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

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

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

(ii) trusts created within a Member State, (a) provided that the trustees and settlor are resident in a Member State at the date of

the creation of a trust and

(b) provided that the trustees remain so resident,

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

Justification

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

Amendment 29 Article 8, paragraph 2

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

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

Article 19 in relation to the customer. ***Those professions the legal status of which makes the provision of the service obligatory, up to the limits of manifest illegality, shall be exempt from the requirement to refrain therefrom.***

Justification

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

Amendment 30
Article 8, paragraph 3

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

3. Member States shall require that institutions and persons covered by this Directive apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers ***whose data have been obtained after entry into force of this Directive*** on a risk-sensitive basis.

Justification

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

Amendment 31
Article 10, paragraph 1, point (a)

(a) credit and financial institutions from the Member States, or from third countries

(a) credit and financial institutions ***and independent legal professionals*** from the

provided that they are subject to requirements to combat money laundering consistent with international standards and are supervised for compliance with those requirements;

Member States, or from third countries provided that they are subject to requirements to combat money laundering consistent with international standards and are supervised for compliance with those requirements;

Justification

The amendment equalises the position as between credit and financial institutions and legal professionals which would otherwise be discriminatory. There is absolutely no reason why a lawyer should not be allowed to rely on due diligence carried out by another legal professional in a third country that complies with international standards.

Amendment 32

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

(ca) insurance premium funding;

Justification

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

Amendment 33

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

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

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

Justification

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

Amendment 34
Article 11, paragraph 1, point (b)

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an institution covered by this Directive;

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an institution **or person** covered by this Directive;

Justification

There is no reason why only institutions and not persons can render confirmatory certificates.

Amendment 35
Article 11, paragraph 1, subparagraph 4, point (a)

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

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

Justification

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

Amendment 36
Article 11, paragraph 2

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

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

Justification

In practice, the prohibition on credit institutions entering into or continuing a correspondent banking relationship with a respondent bank which permits its accounts to be used by shell banks (i.e. indirect relationships with shell banks) cannot be applicable, as banks would have no means of verifying whether their respondents have relations with shell banks. An obligation to know 'the customer's customer' is generally not workable, regardless of whether the customer is another credit institution, legal entity or natural person. This inapplicable

provision would only lead to bureaucracy and red tape, i.e. sending and filing questionnaires without any possibility of verification.

Amendment 37
Article 12, paragraph 1

Member States may permit the institutions and persons covered by this Directive to rely on third parties to perform the requirements laid down in Article 7(1)(a), (b) and (c).

Member States may permit the institutions and persons covered by this Directive to rely on third parties ***that are also covered by this Directive*** to perform the requirements laid down in Article 7(1)(a), (b) and (c).

Justification

The amendment seeks to deliver some real benefits from the possibility of third compliance; as currently proposed those subject to the Directive would clearly have to duplicate compliance in order protect themselves from liability thus negating any advantage from such a system.

Amendment 38
Article 12, paragraph 2

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

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

Justification

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

Amendment 39
Article 12 a (new)

Article 12a

In any event, each Member State shall recognise and accept the domestic laws of any other Member State arising out of the implementation of this Directive as being in full compliance with its domestic laws. As a

result, institutions and persons subject to this Directive in one Member State shall be required to accept customer identification procedures carried out by them in or through their branches, subsidiaries and affiliates in any other Member State in accordance with the domestic laws of that other Member State arising out of the implementation of this Directive.

Justification

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

Amendment 40
Article 14, paragraph 2

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

Relevant copies of identification ***or*** verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded by the third party to the institution or person to which the customer is being referred on request, ***save that this and the preceding paragraph shall apply to independent legal professionals only when their client has consented.***

Justification

It would be a breach of the client/lawyer professional relationship for legal professionals to pass on information without the permission of the client.

Amendment 41
Article 21, paragraph 3 a (new)

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

Justification

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

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

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

Amendment 42

Article 25, paragraph 1

The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles 19, 20 and 21 or that a money laundering investigation is being or may be carried out.

The institutions and persons covered by this Directive and their directors and employees, ***not including independent legal professionals in connection with the giving of legal advice to a client or to any person in connection with or in contemplation of legal proceedings,*** shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Articles 19, 20 and 21 or that a money laundering investigation is being or may be carried out.

Justification

The right to inform the client should be retained for legal professionals in order to recognise their special duties to their clients.

Amendment 43

Article 25, paragraph 1 a (new)

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

Amendment 44
Article 29, paragraph 2 a (new)

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

Justification

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

Amendment 45
Article 37, paragraph 1, introductory part

1. In order to take account of technical developments in the fight against money laundering and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

1. In order to take account of technical developments in the fight against money laundering **and terrorist financing** and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 38(2), adopt the following implementing measures:

Justification

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

Amendment 46
Article 37, paragraph 1, point (a)

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

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

Justification

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

Amendment 47
Article 38, paragraph 1

1. The Commission shall be assisted by a Committee on the Prevention of Money Laundering, hereinafter “the Committee”.

1. The Commission shall be assisted by a Committee on the Prevention of Money Laundering, hereinafter “the Committee”, ***which Committee shall, together with the Commission, deliver an annual report on its activities and deliberations to the European Parliament and to the Council.***

Justification

The issues to be dealt with by the Committee are not just technical and reflect on the overall functioning and content of the Directive. There should therefore be some democratic oversight.

Amendment 48
Article 39

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

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

Justification

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

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
References	COM(2004)0448 – C6-0143/2004 – 2004/0137(COD)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	JURI 27.10.2004
Enhanced cooperation	No
Drafts(wo)man Date appointed	Diana Wallis 22.11.2004
Discussed in committee	20.1.2005 2.2.2005 7.3.2005
Date amendments adopted	7.3.2005
Result of final vote	for: 13 against: 5 abstentions: 0
Members present for the final vote	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Klaus-Heiner Lehne, Marcin Libicki, Alain Lipietz, Antonio López-Istúriz White, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Theresa Villiers, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina
Substitutes present for the final vote	Alexander Nuno Alvaro, Jean-Paul Gauzès, Luis de Grandes Pascual, Adeline Hazan, Barbara Kudrycka, Kurt Lechner, Evelin Lichtenberger, Arlene McCarthy, Marie Panayotopoulos-Cassiotou, József Szájer
Substitutes under Rule 178(2) present for the final vote	Harald Ettl

27.1.2005

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a European Parliament and Council directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))

Draftswoman: Luciana Sbarbati

SHORT JUSTIFICATION

This is not the first time that Parliament has had to address the delicate issue of balancing the need to maintain public order and security and the need to safeguard fundamental rights. The Committee on Civil Liberties, Justice and Home Affairs has recently submitted (and secured Parliament's adoption of) an own-initiative report on the future of the area of freedom, security and justice (the Bourlanges report [A6-0010/2004], which was adopted on 14 October 2004 [T6-0022/2004]), and also an amendment (adopted in plenary with 329 votes in favour) which provides for the preliminary assessment of any new proposal for a legislative act from the point of view of upholding fundamental rights. Prior assessment intended to ensure that the fundamental rights defined in the EU Charter of Fundamental Rights are upheld will have to be carried out in respect of any EU or EC legislative act.

The proposal for a directive on the prevention of the use of the financial system for the purpose of money laundering (including terrorist financing) therefore belongs in the grey area in which individual rights and freedoms may have to be sacrificed in the higher general interest of preventing and repressing terrorist activity. The legislator does certainly appear to be aware of the danger that the scope of the proposed legislation may give rise to a conflict of interests - so much so that in the proposal's final recital (recital 29) he makes a point of emphasising that the directive 'respects the fundamental rights and observes the principles recognised' in the Nice Charter (which has now been incorporated into the second part of the Constitutional Treaty), and also complies with the European Convention on Human Rights.

However, the substance of the provisions laid down in the proposal embodies merely a commonplace statement of principle that falls short of the political ethic adopted by Parliament, which - ever since the Charter was proclaimed in Nice - has endeavoured to abide by the substance of that charter as it exercises the powers conferred upon it as an institution.

In its opinion on the Constitutional Treaty it recognises that all the EU institutions are bound by the same obligation: *the incorporation of the EU Charter of Fundamental Rights in part II of the Constitution, which means that all provisions of European Union law and all measures taken by the EU institutions or based on EU law will have to comply with those standards (EP resolution T6 0004/2005 of 12/1/05).*

The Commission too has always demonstrated that it wishes to adopt a similar pro-active approach to the Constitutional Charter, as emphasised by its former President - Mr Prodi - at the end of the last IGC in a message addressed to his own officials: *'The inclusion of the Charter of Fundamental Rights in this text and the clear statement of the EU's values and objectives and of the basis principles governing relations between the EU and its Member States mean that we can describe this basic text as our Constitution'.*

In the case referred to in Petition 693/2003¹ relating to the normal activities performed by lawyers in advising their clients and representing them in court, fundamental rights and freedoms could be at stake. This applies to the protection of personal data (II-68 of the Constitutional Treaty), freedom of expression and information (II-71 of the Constitutional Treaty), the freedom to choose an occupation and the right to engage in work (II-75.2 of the Constitutional Treaty), and the right to appeal to an impartial judge. As the petitioners argue at length, a lawyer's independence (which is essential to the provision whereby 'everyone shall the possibility of being advised, defended and represented' - II-107 of the Constitutional Treaty) is based on the preservation of confidentiality in dealings with clients. Both independence and confidentiality would be jeopardised by the requirements to provide information which are referred to in Chapter III of the proposal under consideration. A lawyer who is required to disclose a suspect transaction to the financial information unit becomes an auxiliary agent of the State. In this connection it would be as well to point out that the Court of Justice of the European Communities² has always held that restrictions on the exercise of the right of ownership and the right to engage freely in professional activity are admissible, provided that they are actually needed in order to enable objectives of general interest to be achieved and that they do not constitute - in relation to the aim pursued - a disproportionate and intolerable burden which may undermine the substance of the fundamental rights guaranteed.

The relationship of trust which is fundamental to the conclusion of a contract between a lawyer and his client presupposes that the latter is free to confide in an adviser unreservedly and that the lawyer - acting impartially - is able to give his client suitable legal advice. However, if the lawyer is required from the outset of his dealings with his client to work in effect on behalf of a third party and to carry out a preliminary investigation in order to ascertain the client's identity and the ultimate aim of the client's request for advice, he will debase his role. And if there is no longer any lawyer involved to act as a filter, it will be even harder to prevent criminal acts from being perpetrated - which is the precise opposite of what the legislation under consideration is intended to achieve.

Petition 693/03 refers to Directive 2001/97/EC amending the earlier directive 91/308/EEC,

¹ Petition 693/2003 by Paul-Albert Iweins (French), on behalf of the Paris Bar, the National Bar Council and the Conference of Chairmen of the Bar; Commission reply received on 19 May 2004 (see Fdr CM/528795).

² Judgments of 17 October 1995, the Queen/Minister of Agriculture, Fisheries and Food, ex parte Fishermen's Organisation and others, paragraph 55, and of 7 August 1996, Commission v. Belgium, paragraphs 31 and 32.

which the new proposal is intended to repeal. However, in the Explanatory Memorandum the Commission emphasises that 'the new Directive should build on the current *acquis* and [...] the existing provisions, in particular as regards the treatment of the professions, should not be called into question where there is no need to do so.' On 7 December the Ecofin Council was careful not to reopen the debate on an issue which had been the subject of a thorny conciliation procedure in 2001. However, the petition is supported by professional bodies in France, Belgium, Germany, Italy, Spain and Poland, and also by European lawyers' associations. Since 2001 the interested parties have had to suffer the consequences of this obscurantist interpretation of justice. Pursuant to Article 2 of the 2001 Directive, the Commission was required to submit (three years after the directive came into force) a report assessing the way in which lawyers and other independent legal professionals had been treated. The Commission has yet to comply with that requirement. It is true that, in the meantime, the Financial Action Task Force (FATF) has put forward 40 recommendations for combating terrorism and the financing thereof, but this does not justify the wholesale dismissal of the countless protests expressed by interested parties calling for fundamental rights and freedoms to be upheld. The claim that the decision to repeal the existing directives was dictated - amongst other things - by the need for clarity is far from clear from a reading of the new wording of no fewer than 43 articles. The new text incorporates the distinction (not an easy one to grasp) between simplified and enhanced 'due diligence' requirements and it places a ban on any disclosure of the fact that information has been forwarded to the financial intelligence unit (although a pseudo-derogation is allowed in the case of notaries and other independent legal professionals [see Article 25(2)], whilst under Articles 37 and 38 a new Committee on the Prevention of Money Laundering has been given plenty of scope for discretion in the implementation of technical aspects and in the selection of the various detailed identification rules. All of this is in the name of a so-called reconciliation between the requirements of legal certainty and the requirements of public order.

Still unresolved is the linguistic matter raised in petition 177/2002 (submitted by the *Consejo General de la Abogacía Española*) concerning the dubious translation into many languages of the section of the text pursuant to which certain independent legal professionals (including lawyers) are exempted from the obligation to provide information in the course of ascertaining the legal situation of their clients (see Article 6(3) of Directive 2001/97/EC and Article 20(2) of the proposal under consideration). This is an inherently very vague concept which the Commission persists in using - having provided the Spanish petitioners with a somewhat Byzantine reply. It must be pointed out that, in the interests of safeguarding the individual's right of defence, other FATF member states (from Canada to the USA) have secured a moratorium on the implementation of the 40 recommendations designed to prevent money laundering. Furthermore, under Swiss law the activities of lawyers and notaries are specifically excluded from the scope of the measures designed to prevent money laundering, it being recognised that, in such matters, professional confidentiality has precedence.

The committee therefore calls for the proposal to be withdrawn and to be resubmitted once the preliminary assessment referred to in the Bourlanges Report (A6-0010/2004) has been carried out and/or the assessment report referred to in Article 2 of Directive 2001/97/EC has been drawn up. The committee also calls for the following amendments to be made to the text:

AMENDMENTS

The Committee on Petitions calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
<p>Amendment 1 Article 2, paragraph 1, point 3 b)</p>	
<p>(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:</p> <p>(i) buying and selling of real property or business entities;</p> <p>(ii) managing of client money, securities or other assets;</p> <p>(iii) opening or management of bank, savings or securities accounts;</p> <p>(iv) organisation of contributions necessary for the creation, operation or management of companies;</p> <p>(v) creation, operation or management of trust companies or similar structures;</p>	<p>(b) lawyers, notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in a financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:</p> <p>(i) buying and selling of real property or business entities;</p> <p>(ii) managing of client money, securities or other assets;</p> <p>(iii) opening or management of bank, savings or securities accounts;</p> <p>(iv) organisation of contributions necessary for the creation, operation or management of companies;</p> <p>(v) creation, operation or management of trust companies or similar structures,</p> <p><i>provided that the information thus obtained from their clients does not relate to activities covered by professional confidentiality.</i></p>

Amendment 2
Article 3, point 12 a) (new)

12a) 'activities covered by professional confidentiality' means the ascertainment of the legal situation of the client by the lawyers, notaries and other liberal legal professionals and the performance by them

¹ Not yet published in OJ.

of the duties involved in defending and/or representing the client in the course of legal or administrative procedures and of the activities engaged in by them in connection with arbitration and mediation procedures.

Amendment 3
Article 10, paragraph 3a (new)

3a. In any event the specific activities engaged in by the independent legal professionals referred to in Article 3 12a) shall not be subject to the obligations laid down in Article 6, 7 and 8 of this Directive, in so far as the bond of professional confidentiality takes precedence over such obligations.

Amendment 4
Article 20, paragraph 2

2. Member States shall not ***be obliged to*** apply the obligations laid down in Article 19(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

2. Member States shall not ***apply*** the obligations laid down in Article 19(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings, ***or within the framework of arbitration or mediation procedures.***

Amendment 5
Article 20, paragraph 2, subparagraph 1a (new)

In any event, legal advice - which is not provided within an unmistakable context of money laundering - shall be subject solely to the bond of professional confidentiality.

Amendment 6
Article 21, paragraph 3 (new)

In so far as independent legal professionals are subject to the bond of professional confidentiality, they shall not be covered by the provisions of the third paragraph.

Amendment 7
Article 25, second paragraph

Where independent legal professionals, notaries, auditors, accountants and tax advisors, acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the first paragraph.

The prohibition laid down in the above paragraph shall not apply to those activities of legal professionals in which the bond of professional confidentiality takes precedence.

Amendment 8
Article 39

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

Within ***two*** years of the entry into force of this Directive - ***and, in any event, before the Treaty adopting a Constitution for Europe comes into force*** - and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive (***with particular reference to the way in which the professional confidentiality of lawyers and other independent legal professionals is treated***) and submit it to the European Parliament and the Council.

PROCEDURE

Titre	Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
References	COM(2004)0448 – C6-0143/2004 – 2004/0137(COD)
Committee responsible	LIBE
Committee asked for opinion Date announced in plenary	PETI 27.10.2004
Enhanced cooperation	no
Draftswoman Date appointed	Luciana Sbarbati 22.11.2004
Discussed in committee	18.1.2005
Date adopted	18.1.2005
Result of final vote	for: 6 against: 4 abstentions: 0
Members present for the final vote	Robert Atkins, Manolis Mavrommatis, Marie Panayotopoulos-Cassiotou, Richard Seeber, Rainer Wieland, Michael Cashman, Proinsias De Rossa, Miguel Angel Martinez Martinez, David Hammerstein Mintz, Marcin Libicki
Substitutes present for the final vote	
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing					
References	COM(2004)0448 – C6-0043/2004 – 2004/0137(COD)					
Legal basis	47(2) and 95 EC					
Basis in Rules of Procedure	Rule 51					
Date submitted to Parliament	30.06.2004					
Committee responsible Date announced in plenary	LIBE 27.10.2004					
Committee(s) asked for opinion(s) Date announced in plenary	CONT 27.10.2004	ECON 27.10.2004	IMCO 27.10.2004	JURI 27.10.2004	PETI 27.10.2004	
Not delivering opinion(s) Date of decision	CONT 30.11.2004					
Enhanced cooperation Date announced in plenary	ECON 10.03.2005					
Rapporteur(s) Date appointed	Hartmut Nassauer 13.09.2004					
Previous rapporteur(s)						
Simplified procedure Date of decision						
Legal basis disputed Date of JURI opinion	/					
Financial endowment amended Date of BUDG opinion	/					
European Economic and Social Committee consulted Date of decision in plenary	0.0.0000					
Committee of the Regions consulted Date of decision in plenary	0.0.0000					
Discussed in committee	24.11.2004	21.02.2005	31.03.2005	26.04.2005		
Date adopted	26.04.2005					
Result of final vote	for: against: abstentions:		47 0 1			
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Mario Borghezio, Mihael Brejc, Maria Carlshamre, Michael Cashman, Giusto Catania, Charlotte Cederschiöld, Fausto Correia, Rosa Díez González, Antoine Duquesne, Kinga Gál, Patrick Gaubert, Elly de Groen-Kouwenhoven, Livia Járóka, Timothy Kirkhope, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Romano Maria La Russa, Henrik Lax, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Hartmut Nassauer, Lapo Pistelli, Martine Roure, Michele Santoro, Amalia Sartori, Inger Segelström, Frank Vanhecke, Manfred Weber, Tatjana Ždanoka					
Substitutes present for the final vote	Panayiotis Demetriou, Koenraad Dillen, Jeanine Hennis-Plasschaert, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Antonio Masip Hidalgo, Vincent Peillon, Herbert Reul, Marie-Line Reynaud, Kyriacos Triantaphyllides, Rainer Wieland					

Substitutes under Rule 178(2) present for the final vote	María Esther Herranz García, Ģirts Valdis Kristovskis	
Date tabled – A6	3.5.2005	A6-0137/2005
Comments	...	