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*Committee on Economic and Monetary Affairs*

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**2013/0025(COD)**

19.6.2013

## **DRAFT OPINION**

of the Committee on Economic and Monetary 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 and terrorist financing  
(COM(2013)0045 – C7-0032/2013 – 2013/0025(COD))

Rapporteur: Krišjānis Kariņš

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## SHORT JUSTIFICATION

The new directive seeks to improve the current framework to prevent the conversion of the proceeds of criminal activity into legitimate funds via the financial system.

The Commission's proposal is drawn up to represent the changes made to the requirements issued by the Financial Action Taskforce (FATF), a global body entrusted to fight money laundering and terrorist financing, in February 2012 and a review conducted by the Commission on the implementation of the current directive in force.

According to the calculations of International Monetary Fund, the extent of money laundering is vast and is estimated to reach 5% of world's GDP. With respect to the competence of the Economic and Monetary Affairs Committee, such criminal activities undermine the integrity of the financial sector, result in loss of revenue for governments, hinder competition and adversely affect the smooth operating of the internal market.

To better address the current challenges, the rapporteur suggests further improvements to the Commission's text.

Firstly, the operations of existing business registers have to be improved. The identification of beneficial owner of the business or the business transaction is key in preventing money laundering and terrorist financing. As proposed by the Commission, it is the responsibility of the company to know its customer and find out who the ultimate beneficiary is. Currently businesses lack ways and means to verify the beneficial owners. This leads to disproportionate burden and liability for companies. Therefore the operations of the existing business registers in Member States should be improved to include beneficial ownership information that would help both authorities and businesses to verify those persons that actually gain from the business transactions. The interconnectivity of registers is vital to efficiently use this information due to the cross-border scope of business and the interconnectivity of the internal market. Therefore registers should be interconnected as already set out in the Directive 2012/17/EU and should be accessible by the authorities and the responsible businesses.

Secondly, the money laundering risk evaluation on the EU level has to be clarified. The rapporteur supports the evaluation of money laundering and terrorist financing risks on the EU level to better allocate resources. However, it should be clearly stated that the risk assessment contains at least the overall evaluation of the extent of money laundering, the risks associated to each relevant sector, the most widespread means used by criminals to launder illicit proceeds and the recommendation of effective deployment of resources. Due to the ever changing business environment, the evaluation should be done periodically and at least on a biannual basis.

Thirdly, the European Supervisory Authorities (ESAs) should issue guidelines in a timely and efficient manner. The authorities in Member States and also companies responsible for the implementation of the respective guidelines have to be aware what the guidelines are before the directive is applicable. Therefore the rapporteur suggests reducing the time period given to ESAs for preparations of guidelines to one year. This will allow for businesses and state authorities to prepare for the necessary changes envisaged in those guidelines.

Finally, a coherent and effective supervision has to be achieved for group entities. This can be done by cooperation of the authorities between home and host countries. The relevant EU authorities should provide guidelines to improve the cooperation of relevant state authorities.

## 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:

### Amendment 1

#### Proposal for a directive Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(11a) Technological progress has provided tools by which obliged entities can verify the identity of their customers when certain transactions occur. Such technological improvements provide time and cost-effective solutions to businesses and to customers and therefore should be taken into account when evaluating risk. Competent authorities of Member States and obliged entities should be proactive in combating new and innovative ways of money laundering.***

Or. en

### Amendment 2

#### Proposal for a directive Recital 12 a (new)

*Text proposed by the Commission*

*Amendment*

***(12a) The establishment of beneficial ownership registers by Member States would seriously boost the fight against money laundering, terrorist financing, corruption, tax evasion, fraud and other***

*financial crimes. This could be achieved by improving the operations of the existing business registers in the Member States. The interconnectivity of registers is vital to make use of the information contained therein, due to the cross-border nature of business transactions. The interconnection of business registers across the Union is already set out in Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers.*

Or. en

### **Amendment 3**

#### **Proposal for a directive Recital 16**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### **Amendment 4**

#### **Proposal for a directive Recital 25**

*Text proposed by the Commission*

(25) All Member States have, or should, set

*Amendment*

(25) All Member States have, or should, set

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

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

***It is important that Member States provide FIUs with the necessary resources to ensure their full operational capacity to deal with the current challenges posed by money laundering and terrorist financing.***

Or. en

## **Amendment 5**

### **Proposal for a directive Recital 31**

#### *Text proposed by the Commission*

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring,

#### *Amendment*

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring,

investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.

investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, ***identification of a politically exposed person***, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.

Or. en

## Amendment 6

### Proposal for a directive

#### Recital 37

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

## Amendment 7

### Proposal for a directive Recital 37 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 8

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 9

### Proposal for a directive Article 3 – point 7 – point e – point ii

*Text proposed by the Commission*

*Amendment*

(ii) any partner considered as equivalent to the spouse;

(ii) any partner considered as equivalent to the spouse ***in accordance with the law of***



*the relevant state;*

Or. en

#### **Amendment 10**

##### **Proposal for a directive Article 6 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

#### **Amendment 11**

##### **Proposal for a directive Article 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The opinion referred to in paragraph 1 shall consist of at least an overall evaluation of the extent of money laundering, the risks associated to each relevant sector, the most widespread means used by criminals to launder illicit proceeds, and the recommendations to the competent authorities on the effective deployment of resources.***

Or. en

#### **Amendment 12**

##### **Proposal for a directive Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The opinion shall be provided on a biannual basis.**

Or. en

### **Amendment 13**

#### **Proposal for a directive Article 7 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

### **Amendment 14**

#### **Proposal for a directive Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

### **Amendment 15**

#### **Proposal for a directive Article 15 – paragraph 1**

*Text proposed by the Commission*

EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken into consideration and/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within **2 years** of the date of entry into force of this Directive.

*Amendment*

EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken into consideration and/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within **one year** of the date of entry into force of this Directive.

Or. en

**Amendment 16**

**Proposal for a directive  
Article 16 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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

### Amendment 17

#### Proposal for a directive

#### Article 27 – paragraph 1 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### Amendment 18

#### Proposal for a directive

#### Article 27 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

### Amendment 19

#### Proposal for a directive

#### Article 30 a (new)

*Text proposed by the Commission*

*Amendment*

**Article 30a**

- 1. For the purpose of establishing beneficial ownership, business registers in each Member State shall contain, but shall not be restricted to, information on beneficial ownership of corporate or legal entities established within their territory.**
- 2. Registers referred to in paragraph 1 shall contain the information set out in Article 30(1).**
- 3. The information referred to in paragraphs 1 and 2 of this Article shall be accessible by competent authorities and by obliged entities in a timely manner.**
- 4. The information referred to in paragraphs 1 and 2 of this Article shall be maintained up to date.**
- 5. Registers referred to in paragraph 1 of this Article shall be interconnected and accessible by competent authorities and obliged entities from other Member States.**

Or. en

**Amendment 20**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 21

### Proposal for a directive Article 44 – paragraph 3

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 22

### Proposal for a directive Article 56 – paragraph 2 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

#### *Justification*

*In cases when the annual turnover of the parent undertaking significantly exceeds that of the subsidiary, the fine would be disproportionately high. Imposing too severe sanctions would adversely affect the subsidiary.*

## Amendment 23

### Proposal for a directive Article 57 – paragraph 3

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 24

### Proposal for a directive Annex III – paragraph 1 – point 2 – point c

#### *Text proposed by the Commission*

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

#### *Amendment*

(c) non-face-to-face business relationships or transactions, ***except when certain safeguards are introduced, e.g. electronic signatures;***

Or. en