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Committee on Legal Affairs

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OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs and 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))

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PA_Legam

SHORT JUSTIFICATION

The European legislative framework involves a series of measures designed to combat money laundering on the part of organisations involved in crime. Money laundering represents an estimated figure of 330 billion euro (based on UN Office of Drugs and Crime figures for 2011). Other estimations conducted using a similar rationale suggests that the amount available for money laundering amounts to 2.7 % of the world's GDP. This figure gives an idea of the scale of the threat that illegal activity represents in the existing economy.

Moreover, such money laundering is often closely tied to the collection of funds indirectly related to terrorist activity. If the primary goal of organised crime is to generate illegal profits, terrorist groups deploy their revenues to pursue objectives that are not necessarily economically motivated. These might include advertising their cause or increasing their political influence.

The foremost international body set up to combat money laundering is the Financial Action Task Force (FATF) which has undertaken a fundamental review of the international standards and adopted a new set of Recommendations in February 2012. In line with the recommendations to be found in these texts, a series of Financial Intelligence Units (FIUs) have been set up in participating countries.

Most efforts devoted to combating these types of phenomena focus on preventive measures. For this reason, international bodies – such as the United Nations (UN) and the Financial Action Task Force (FATF) – have established a series of norms for financial entities, other business sectors and individuals. The principle of “know one's client” is at the core of this regulatory activity and the notion has been integrated into the EU legislative framework by means of a range of directives.

The Commission proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing incorporates and repeals Directive 2005/60/CE and Directive 2006/70/CE. The proposal is a response to changes made to the requirements issued by the FATF and a review carried out by the Commission in 2010 on the implementation of the Third anti-money laundering directive (3rd AMLD). The proposed initiatives aim to coordinate and integrate the existing norms, and create a more targeted and focused risk-based approach across the EU in order to fight money laundering more efficiently.

This supposes that

- a) Member States should be able to compel foreign entities functioning on their territory to report all their suspicious activities to the FIU in the member state in question (i.e the host country of the foreign entity). It also means that foreign entities should also comply with requirements concerning the transparency of information in a said country.
- b) Supervision should be extended to cover gambling services in general and not only casinos, without giving a homogenous treatment to all gambling categories. The norms proposed by the Commission should be applied to casinos, while online gambling should be considered as a permanent business relation (and documentation of the transactions involved should be

available as soon as the account is opened). For other remaining gambling services, scope of supervision should be extended, where appropriate, to the major risk that the payment of prizes represents. Member States should define the measures to be applied in relation to their distinct risk evaluation.

c) Relevant documentation is stored for five years with a possibility of further retention and that the business administrators are listed as the real owners, with the appropriate guarantees.

These measures represent a necessary extension of the scope of the supervision covered by the existing legislation. At the same time, punitive measures to be taken in cases of infringement have been strengthened.

AMENDMENTS

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

Amendment 1

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this 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**. There should, however, 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 of a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering **or** terrorist financing,

Amendment

(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this 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, **terrorist financing, criminal activity as defined in Article 3(4) or aggressive tax avoidance**. There should, however, 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 of a client. Thus, legal advice should remain subject to the obligation of professional secrecy

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.

unless the legal counsellor is taking part in money laundering, terrorist financing, ***criminal activity as defined in Article 3(4) or aggressive tax avoidance***, the legal advice is provided for money laundering, terrorist financing purposes, ***criminal activity as defined in Article 3(4) or aggressive tax avoidance***, or the lawyer knows that the client is seeking legal advice for money laundering, terrorist financing purposes *or criminal activity as defined in Article 3 (4) or aggressive tax avoidance*.

Justification

Legal professionals have a duty of care to ensure that the services they provide are not used for the purpose of tax evasion and aggressive tax avoidance - which can be part of an 'under the radar' strategy for money laundering and terrorist financing.

Amendment 2

Proposal for a directive

Recital 10

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a directive Recital 11

Text proposed by the Commission

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

Amendment

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

Justification

Wording should be strengthened to improve international and European cooperation for information of company's beneficial ownership - particularly in the light of recent European Council and G8 commitments. Investors have the right to know who the beneficial owner of listed companies are as well.

Amendment 4

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. ***In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an obligation for all providers of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. Member States should consider applying this threshold to the collection of winnings as well as wagering a stake.***

Amendment

(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. ***However, one must differentiate between*** gambling services ***which bear a high risk of being used for money laundering and those*** gambling services ***where such a risk is very low. Accordingly, casinos and providers of online*** gambling services ***have to be treated differently from providers of other gambling services.*** Casinos should ensure that customer due diligence, taken at the

Providers of gambling services **with physical premises (e.g. casinos and gaming houses)** should ensure that customer due diligence, **if it is** taken at the point of entry to the premises, can be linked to the transactions conducted by the customer on those premises.

point of entry to the premises, can be linked to the transactions conducted by the customer on those premises.

Justification

This amendment mirrors amendment on article 2 paragraph 1 subparagraph 3 , point f. Supervision should be extended to cover gambling services in general and not only casinos, without giving an “equal” treatment to all gambling categories.

Amendment 5

Proposal for a directive **Recital 25**

Text proposed by the Commission

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

Amendment

(25) All Member States have, or should, set up 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 **and** analysing suspicious **transactions report** and other information **relevant to** money laundering, **associated predicate offences and** terrorist financing, **and for disseminating to the competent authorities the results of these analyses**. 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.

Justification

The suspicious transactions are confidential and not disseminated, among other things to protect entities that send suspicious communications. Furthermore, on the basis of these submissions, the FIUs perform a series of analysis and research, determining which operations have sufficient grounds to be transmitted to police, public prosecutors ... and attached to them is the result of that analysis, which includes additional information that the FIU has been able to gather. FATF standards (Recommendation 29) acknowledge this, determining that the FIUs are national centers for receiving and analyse STRs (and other information) and for the dissemination of the results of these analyses.

Amendment 6

Proposal for a directive

Recital 31

Text proposed by the Commission

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

Amendment

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is 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.

Justification

Recital 32 recognises that fight against money laundering and terrorist financing (hereinafter AML/TF) are “an important public interest”. Accordingly it seems excessive to restrict so outwardly the collection of personal data. Such a hard restriction is inconsistent with the reinforced risk-based approach adopted by the Directive. It can lead obliged entities to

misinterpretation and concerns about their legal situations when trying to comply simultaneously with this provision and the overall enhanced customer due diligence (CDD) requirement.

Amendment 7

Proposal for a directive Recital 34

Text proposed by the Commission

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

Amendment

(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained in a suspicious transaction report, *or obtained in order to examine transactions or patterns of transactions, which have no apparent economic or lawful purpose*, would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations to this right in accordance with the rules laid down in Article 13 of Directive 95/46/EC *are* therefore justified.

Justification

Limitation to the rights of access should be granted also for the data collected in order to comply with Article 16.2, which is an integral part of the process that lead to the report of suspicious transactions. This limitation should be compulsory. Otherwise, it would not only undermine the effectiveness of the AML/TF system but it would be contradictory with articles 38 (prohibition of disclosure to the customer) and 37 (protection of employees of the reporting entity).

Amendment 8

Proposal for a directive Article 1 – paragraph 4

Text proposed by the Commission

4. For the purposes of this Directive, ‘terrorist financing’ means the provision or

Amendment

4. 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 of 13 June 2002 on combating terrorism³⁴, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008³⁵.

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, **by an individual terrorist or a terrorist organisation, or** in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism³⁴, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008³⁵.

³⁴ OJ L 164, 22.6.2002, p. 3.

³⁵ OJ L 330, 9.12.2008, p. 21-23.

³⁴ OJ L 164, 22.6.2002, p. 3.

³⁵ OJ L 330, 9.12.2008, p. 21-23.

Justification

The definition of terrorist financing should be in line with the one of the financial action task force (hereinafter FATF).

Amendment 9

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point d

Text proposed by the Commission

(d) real estate agents, **including letting agents**;

Amendment

(d) real estate agents;

Justification

There is no adequate evidence justifying the extension of the scope of the Directive to letting agents. Typologies have not detected the use of letting agents to launder money.

Amendment 10

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point e

Text proposed by the Commission

Amendment

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

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

Amendment 11

Proposal for a directive

Article 2 – paragraph 1 – point 3 – points f, f a (new) and f b (new)

Text proposed by the Commission

Amendment

(f) providers of gambling services;

(f) **casinos;**

(fa) on-line gambling;

(fb) other providers of gambling services, **regarding the payment of prizes;**

Justification

It is necessary to differentiate between the different types of gambling. Some types bear a high risk of being used for money-laundering (ML), while other types bear less risk. For other providers of gambling services, your rapporteur considers that the risk of ML takes only place at the time of the payment of prizes and that it is proportionate to limit their obligations to those particular situations.

Amendment 12

Proposal for a directive

Article 3 – point 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) tax crimes related to direct taxes and indirect taxes;

Justification

It is important to define tax crimes separately due to the gravity of the offences related to it.

Amendment 13

Proposal for a directive

Article 3 – point 4 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a directive

Article 3 – point 5 – point a – point i

Text proposed by the Commission

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union legislation or subject to equivalent international standards.

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

Amendment

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union legislation or subject to equivalent international standards.

level of direct and indirect ownership;

Justification

In applying the 25% threshold in every level of ownership can result into considering as the beneficial owners (B.O) natural persons that do not have in fact any control through shareholding, thus render the information on B.O meaningless.

Amendment 15

Proposal for a directive

Article 3 – point 5 – point a – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) where no natural person is identified under (i) or (ii), the natural person(s) who holds the position of senior managing official. In this case, obliged must keep records of the actions taken in order to identify the B.O under (i) and (ii) in order to be able to justify the inexistence of such persons.

Justification

There may be some cases where shareholding is much diversified and it is impossible to identify the B.O according to (i) or (ii). Your rapporteur therefore advises to incorporate the FATF provisions for these situations to refer to the senior management. The risk that this provision could be excessively and inappropriately used by obliged entities can be mitigated with due safeguards.

Amendment 16

Proposal for a directive

Article 3 – point 7 – point a

Text proposed by the Commission

Amendment

(a) "foreign politically exposed persons" means natural persons who are or have been entrusted with prominent public functions by **a** third country;

(a) "foreign politically exposed persons" means natural persons who are or have been entrusted with prominent public functions by **another** third country;

Justification

There are no criteria to justify that there is less risk in the fact that the other country is a member of the EU or a third country. The approach adopted by the Commission is against the FATF standards that have not recognised any supra-nationality aspect in this area. It would be difficult to justify the grounds for the proposed approach on the basis of risk or any common mitigating measures at EU level.

Amendment 17

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

Text proposed by the Commission

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

Amendment

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

Linguistic amendment

Amendment 18

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

Text proposed by the Commission

(ii) members of parliaments;

Amendment

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

Amendment 19

Proposal for a directive Article 3 – point 10

Text proposed by the Commission

(10) "gambling services" means any service which involves wagering a stake with monetary value in games of chance including those with an element of skill

Amendment

(10) "gambling services" means any service which involves wagering a stake with monetary value, **or which can be converted into money**, in games of chance

such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

including those with an element of skill such as lotteries, **bingo**, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

Justification

In order to mitigate the risks of mafia infiltration and money laundering and to ensure that gambling service providers have a level playing field, the directive should apply to all types of games, including games of chance that are marketed through social networks. The risks associated with the gambling industry mean that all games should be subject to the same control measures, so that there are no 'grey areas'. Equally, it should be specified that bingo is included among 'gambling services'.

Amendment 20

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

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

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

Amendment

1. **The European Commission shall produce an assessment on the money laundering and terrorist financing risks affecting the internal market. In order to produce such assessment, the European Commission will consult Europol, the European Banking Authority (hereinafter "EBA"), the European Insurance and Occupational Pensions Authority (hereinafter "EIOPA"), the European Securities and Markets Authority (hereinafter "ESMA"), and other authorities, as necessary.**

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

Justification

In the rapporteur's view, the Commission is better placed to produce an integral assessment on the AML/CFT risks, as requested by the international standards. Such an assessment will need input from other relevant agencies (such as law enforcement and border control authorities).

Amendment 21

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

Consistent with the amendment on Paragraph 1.

Amendment 22

Proposal for a directive Article 10 – point d

Text proposed by the Commission

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

Amendment

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

for on-line gambling when establishing the business relationship;

for other providers of gambling services, regarding the payment of prizes amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations

which appear to be linked;

Justification

It is necessary to differentiate between the different types of gambling. Some types bear a high risk of being used for money-laundering (ML), while other types bear almost no risk. Organizers of low-ML-risk types of gambling should only be required to conduct CDD measures once the prize exceeds a certain threshold.

Amendment 23

**Proposal for a directive
Article 17 – paragraph -1a (new)**

Text proposed by the Commission

Amendment

(-1a) Each Member State obliges the entities referred to in Article 2.1 (1) and (2) to ensure that they do not execute transactions to and from providers of gambling services who do not possess the required gambling license in that Member State.

Justification

This amendment aims to facilitate the blocking of payments to and from gambling operators which are not in possession of the required national license. The directive and implementation laws will only cover legal providers of gambling services (who possess the required national/regional gambling license). However, it is illegal gambling offers that bear the highest money laundering risk. The blocking of payments to and from providers of such illegal offers would therefore make an important contribution.

Amendment 24

**Proposal for a directive
Article 19 – introductory wording**

Text proposed by the Commission

Amendment

In respect of transactions or business relationships with domestic politically

Member States shall require obliged entities:

exposed persons or a person who is or has been entrusted with a prominent function by an international organisation, Member States shall, *in addition to the customer due diligence measures set out in Article 11*, require obliged entities:

Justification

The rapporteur advocates following the drafting according to the international standards, which recognises that the a priori overall risk posed by a foreign and domestic PEP is not the same, and therefore the nature of measures required to obliged entities differs in both circumstances. The proposed approach would impose a disproportionate burden on obliged entities, forcing them in practice to submit all their customers to enhanced CDD measures

Amendment 25

**Proposal for a directive
Article 19 – point a**

Text proposed by the Commission

a) to *have appropriate risk-based procedures* to determine whether *the* customer or *the* beneficial owner *of the customer is such* a person;

Amendment

a) to *take reasonable measures* to determine whether *a* customer or beneficial owner *is a domestic PEP or* a person *who is or has been entrusted with a prominent function by an international organisation*.

Justification

This provision- literally transposed from foreign PEPs-has been understood internationally as an obligation for obliged entities to determine whether any non-resident customer is a PEP. Extending this obligation in relation to all domestic customers would seem disproportionate.

Amendment 26

**Proposal for a directive
Article 29 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that corporate or legal entities *established*

Amendment

1. Member States shall ensure that corporate or legal entities *created* within

within their territory obtain and hold adequate, accurate and current information on their beneficial ownership.

their territory obtain and hold adequate, accurate and current information on their beneficial ownership.

Justification

The FATF standards refer to legal persons created in the country. The rapporteur advises to adhere to this term as a matter of consistency.

Amendment 27

**Proposal for a directive
Article 31 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

Justification

In addition to the information that obliged entities shall report to the FIU (under the receipt function), the FIU should be able to obtain and use additional information from reporting

entities, as needed to perform its analysis properly. Furthermore, the FIUs should be able to respond to information requests from law enforcement authorities in their Member State related to investigations of money laundering, associated predicate offences and terrorist financing. When the FIU receives such an information request, the decision on conducting analysis and/or dissemination of information to the requesting law enforcement authority should remain with the FIU.

Amendment 28

Proposal for a directive Article 37 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall **ensure that the obliged entities prevent their own** employees who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action, **including termination of employment, and that these should be provided with adequate legal protection if required.**

Justification

Employees who report suspicions of money laundering activities should be adequately protected, be provided legal protection and should not fear that their employment might be terminated.

Amendment 29

Proposal for a directive Article 39 – point a

Text proposed by the Commission

a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their customer has ended. Upon expiration of this period, personal data shall be deleted unless otherwise provided for by

Amendment

a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their customer has ended, **or after the date of the occasional transaction.** Upon expiration of this period, personal data

national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period after the business relationship has ended shall not exceed ten years;

shall be deleted unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period after the business relationship has ended shall not exceed ten years;

Justification

According to Article 10, subjects were required to perform customer due diligence not only when establishing a business relationship (long term), but also when conducting occasional transactions above certain thresholds. The amendment's aim is to extend the obligation to retain the collected information from occasional transactions. This is consistent with the recommendations of the FATF (recital 11).

Amendment 30

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

Text proposed by the Commission

Amendment

da) countries with a prominent off-shore financial sector

Justification

Shifts to third countries are often due to the opacity guarantee offered by them in relation to the authorities of the country of origin, including tax. The latter is more relevant after the explicit inclusion in the FATF of tax offenses as crimes that derivate from money laundering.

PROCEDURE

Title	Prevention of the use of the financial system for the purpose of money laundering and terrorist financing
References	COM(2013)0045 – C7-0032/2013 – 2013/0025(COD)
Committees responsible Date announced in plenary	ECON LIBE 12.3.2013 12.3.2013
Opinion by Date announced in plenary	JURI 12.3.2013
Rapporteur Date appointed	Antonio López-Istúriz White 20.6.2013
Rule 51 – joint committee meetings Date announced in plenary	10.10.2013
Discussed in committee	17.9.2013
Date adopted	26.11.2013
Result of final vote	+: 14 -: 7 0: 1
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eduard-Raul Hellvig, Eva Lichtenberger, Dagmar Roth-Behrendt, József Szájer, Axel Voss