

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0380/2001

5 November 2001

*****III REPORT**

on the joint text approved by the Conciliation Committee for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering
(PE-CONS 3654/2001 - C5-0496/2001 – 1999/0152(COD))

European Parliament delegation to the Conciliation Committee

Rapporteur: Klaus-Heiner Lehne

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
PROCEDURAL PAGE	4
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT	6

PROCEDURAL PAGE

At the sitting of 5 July 2000 Parliament adopted its position at first reading on the proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 - 1999/0152 (COD)).

At the sitting of 17 January 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (12469/1/2000 - C5-0678/2000).

At the sitting of 5 April 2001 Parliament adopted amendments to the common position.

By letter of 5 July 2001 the President of the Council informed Parliament that it was necessary to extend the deadline for acting on Parliament's amendments, as laid down in Article 251(7) of the EC Treaty.

By letter of 20 August 2001 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 18 September 2001.

At the meeting the Conciliation Committee considered the common position on the basis of the amendments proposed by Parliament.

In the light of subsequent delegation meetings agreement was reached by exchange of letters of 2 and 10 October 2001.

At the meeting of 17 October 2001 the members of the delegation adopted unanimously, with one abstention, the results of the conciliation.

The following took part in the vote: James L.C. Provan, Vice-President and chairman of the delegation; Renzo Imbeni, Vice-President; Graham R. Watson, chairman of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; Klaus-Heiner Lehne, rapporteur; Maria Berger, Marco Cappato, Glyn Ford, Carmen Fraga Estévez (for Ana Palacio Vallelersundi), Timothy Kirkhope, Elena Ornella Paciotti, Hubert Pirker, Gerhard Schmid, Diemut R. Theato (for Ingo Friedrich).

On 24 October 2001 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure¹.

The report was tabled on 5 November 2001.

¹ OJ C 148, 28.5.1999, p. 1.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the joint text approved by the Conciliation Committee for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (PE-CONS 3654/2001 - C5-0496/2001 – 1999/0152(COD))

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee and the relevant Commission statement(PE-CONS 3654/2001 - C5-0496/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(1999) 352²),
 - having regard to its position at second reading³ on the Council common position⁴,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2001) 330 - C5-0253/2001⁵),
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 83 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A5-0380/2001),
1. Approves the joint text and draws attention to the Commission statement thereon;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Communities;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ OJ C 121 of 24.4.2001, p. 133.

² OJ C 177 E of 27.6.2000, p. 14.

³ Texts Adopted, 5.4.2001.

⁴ OJ C 36 of 2.2.2001, p. 24.

⁵ OJ C not yet published.

EXPLANATORY STATEMENT

Introduction

The European Parliament pressed regularly for the Directive 91/308 of 10 June 1991, one of the main international instruments in the fight against money laundering related to drugs offences, to be updated.

In recent years there has been a trend towards a much wider definition of money laundering based on a broader range of predicate or underlying offences. Such a change facilitates suspicious transaction reporting and international cooperation in this area. In Joint Action 98/699/JHA of December 1998 adopted by the Council, Member States agreed to make all serious offences predicate offences for the purpose of the criminalisation of money laundering.

In addition, because of the tightening of controls in the financial sector, there is a trend towards the increased use by money launderers of non-financial businesses. Therefore, the obligations of the Directive concerning customer identification, record keeping and the reporting of suspicious transactions should be extended to a limited number of activities and professions which have been shown to be vulnerable to money laundering.

Finally, the definition of "credit institution" and "financial institution" should be revised and some activities (inter alia of investment firms, currency exchange offices and money transmitters) should be clearly covered by the new Directive.

In conclusion, the main changes to the 91/308 Directive are a widening of the prohibition of money laundering to embrace not only drugs trafficking but all organised crime, and an extension of the obligations of the Directive to certain non-financial activities and professions. Member States will remain to be free to extend their national anti-money laundering legislation to any other form of criminal activity.

First and second reading

The subject was addressed in the Klaus-Heiner LEHNE (EPP/ED, D) report, adopted at first reading on 5 July 2000. It adopted 33 amendments, mainly on the enlargement of the scope of the Directive, extension of the list of operators outside the financial professions (including art dealers and auctioneers), the status of notaries and legal consultants, casinos and identification requirements with regard to insurance policies.

The Council adopted its common position on 30 November 2000 and incorporated some about half of the EP amendments related to the range of institutions and persons covered by the Directive, the list of operators concerned, casinos and the scope of the option for Member States to exempt certain professions from the information obligations.

At second reading (5 April 2001) Parliament adopted the LEHNE report containing 15 amendments to the common position on definitions (predicate crimes, financial institution, competent authorities), institutions and persons concerned for the inclusion of various non-

financial activities, the identification requirements in respect of insurances contracts, customer identification in casinos, the exceptions related to professions (as far as legal advice and lawyers are concerned the rapporteur deemed it crucial that lawyers should be able to preserve the confidentiality of their clients when performing their traditional role of legal adviser or representative), disclosure of information supplied to the authorities, use of information and liability (information supplied to the authorities used for other purposes) and protection of the Communities financial interests (role of the Commission and the OLAF).

The Commission gave an unfavourable opinion on all the EP amendments on 13 June 2001.

The directive in conciliation

The Council decided it could not accept Parliament's amendments and the EP delegation was constituted on 4 July 2001.

Several trialogue (11 September and 9 October) and delegation (5 September, 2 October and 17 October) meetings took place. The conciliation committee meeting was convened on 18 September 2001.

On the substance, the events of 11 September in the USA changed dramatically the point of view on the issue because from that date on the money laundering Directive was widely considered as part of the fight against terrorism.

The delegation approved (12 votes in favour with 1 abstention) at its meeting of 17 October a compromise package agreed with the Council as follows:

- 6 amendments on predicate crimes, list of financial institutions, various non financial activities, insurance policies and casinos, are fully or partially accepted. On the contrary, the common position is accepted as regards two amendments on the definition of competent authorities and the liability of disclosure;
- the Commission has issued a declaration concerning two amendments on protection of financial interests whereby it reiterates its commitment to launch a proposal before the end of this year;
- a new paragraph is added concerning the amendments on "tipping off": Member States shall not be obliged to apply the obligation laid down to the professions concerned (independent legal professionals and others);
- the amendment on information supplied to the authorities is accepted via the deletion of the paragraph which stated that Member States may provide that the information supplied to the authorities may also be used for other purposes and
- finally, the solution found for the two key amendments on "lawyers" provides for the principle that *"notaries and independent legal professionals should be made subject to the provisions of the Directive when participating in financial or corporate transactions, 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"* (recital 15).

However, *"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"* (new recital 16). Council initially wanted to include the words "or has reason to believe" after "*knows*" in the last sentence. At the end of the procedure, it agreed to drop these words.

Conclusions

The delegation regards the end result of conciliation as very satisfactory for Parliament, as the joint text has incorporated most of its amendments, either in full or in a reworked form. It therefore proposes that the House adopt the text at third reading.