



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Development

2013/0025(COD)

26.6.2013

DRAFT OPINION

of the Committee on Development

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: Bill Newton Dunn

PA_Legam

SHORT JUSTIFICATION

On 2 February 2013 the Commission presented its proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The Commission proposal aims to strengthen the Internal Market by reducing complexity across borders and safeguarding the interest of society from criminality and terrorist acts while ensuring the efficient business environment and financial stability by protecting the soundness, proper functioning and integrity of the financial system. The Commission suggests reaching these objectives by ensuring that the rules are risk-focused and adjusted to address new emerging threats.

The proposal incorporates and repeals Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC¹, thus improving the comprehensibility and accessibility of the anti-money laundering (AML) legislative framework for all stakeholders.

The financial system plays a crucial role in facilitating the movement of dirty money. The European Union should play a key role in a global effort to stem the flows of illicit capital.

Although the Commission proposal presents a good starting basis for the disclosure of information on the beneficial owners of companies, trusts and other legal arrangements, your Rapporteur would like to ensure maximum transparency through public access to this information in the form of central national registers. Access to the ultimate beneficial owner information is of crucial importance for obliged entities not only in the Member States but also in developing countries, so that they are aware who they are really doing business with and can mitigate the risk of being involved in illicit activity.

Money laundering is a crime that often crosses many borders. Your Rapporteur therefore wishes to strengthen the cooperation between the Financial Intelligence Units (FIUs) in the Member States, but also proposes to involve the FIUs from other (including developing) countries ensuring this way that information and best practices can be shared on an international level.

AMENDMENTS

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

¹ OJ L 214, 4.8.2006, p. 29.

Amendment 1

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 **persons** who **exercise** 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 **persons** who **exercise** ownership or control of the legal **persons** that is the customer is found.

Or. en

Amendment 2

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. Providers of gambling services **with physical premises** (*e.g. casinos and gaming houses*) should ensure that customer due diligence, if it is

Amendment

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

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

linked to the transactions conducted by the customer on those premises.

Or. en

Amendment 3

Proposal for a directive Article 3 - paragraph 4 - point ea (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 4

Proposal for a directive Article 3 - paragraph 4 - point f

Text proposed by the Commission

Amendment

(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;

(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;

Or. en

Amendment 5

Proposal for a directive

Article 3 - paragraph 7 - point d - subpoint ii

Text proposed by the Commission

(ii) members of parliaments;

Amendment

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

Or. en

Amendment 6

Proposal for a directive

Article 3 - paragraph 7 - point f - subpoint ii

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 7

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 opinion *publicly* available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing.

Or. en

Amendment 8

Proposal for a directive Article 7 - paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 9

Proposal for a directive Article 11 - paragraph 1 - point b

Text proposed by the Commission

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

Amendment

(b) identifying the beneficial **owners** and taking reasonable measures to verify **their** identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial **owners are**, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

Or. en

Amendment 10

Proposal for a directive Article 11 - paragraph 1 - point d

Text proposed by the Commission

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the

Amendment

(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.

course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including the source of funds and ensuring that the documents, data or information held are kept up-to-date.

Or. en

Amendment 11

Proposal for a directive Article 12 - paragraph 1

Text proposed by the Commission

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 carrying-out of the transaction.

Amendment

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

Or. en

Amendment 12

Proposal for a directive Article 13 - paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. Obligated entities must identify their customers and the beneficial owner(s) of their customers in accordance with Article 11(a) and (b) before identifying a business relationship as lower risk.

Or. en

Amendment 13

Proposal for a directive Article 21

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 14

Proposal for a directive Article 29 - paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Member States shall require that the information referred to in paragraph 1 is disclosed to national authorities which shall establish and maintain a central public registry that shall be updated periodically.

Or. en

Amendment 15

Proposal for a directive Article 29 - paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. Member States shall rapidly, constructively and effectively provide international cooperation in relation to company information, including beneficial ownership information.

Amendment 16

Proposal for a directive Article 30 - paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Member States shall require that the information referred to in paragraph 1 is disclosed to national authorities which shall establish and maintain a central public registry that shall be updated periodically.

Or. en

Amendment 17

Proposal for a directive Article 30 - paragraph 4

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 18

Proposal for a directive Article 30 - paragraph 4a (new)

Text proposed by the Commission

Amendment

4a. Member States shall rapidly, constructively and effectively provide international cooperation in relation to

information, including beneficial ownership information, on trusts and other legal arrangements.

Or. en

Amendment 19

Proposal for a directive Article 37

Text proposed by the Commission

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

Amendment

Member States shall ***ensure that*** 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, ***being terminated from employment, and should be provided with adequate legal protection if required.***

Or. en

Amendment 20

Proposal for a directive Article 38 - paragraph 3

Text proposed by the Commission

3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.

Amendment

3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries which impose requirements ***substantially*** equivalent to those laid down in this Directive provided that they belong to the same group.

Or. en

Amendment 21

Proposal for a directive

Article 38 - paragraph 4 - first part

Text proposed by the Commission

4. The prohibition laid down in paragraph 1 shall 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.

Amendment

4. The prohibition laid down in paragraph 1 shall 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 **substantially** 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.

Or. en

Amendment 22

Proposal for a directive

Article 41 - paragraph 2 - point ba (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 23

Proposal for a directive

Article 41 - paragraph 2 - point bb (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 24

Proposal for a directive

Article 48

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 25

Proposal for a directive

Article 49

Text proposed by the Commission

Amendment

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

Member States shall ensure that their FIUs co-operate with each other ***and with FIUs from non-Member States*** to the greatest extent possible irrespective of whether they are administrative, law enforcement or

judicial or hybrid authorities.

judicial or hybrid authorities.

Or. en

Amendment 26

Proposal for a directive Article 50 - paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 27

Proposal for a directive Article 50 - paragraph 2

Text proposed by the Commission

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

Amendment

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

use secure digital means to exchange information, wherever possible.

means to exchange information, wherever possible.

Or. en

Amendment 28

Proposal for a directive Article 57 - paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it. ***Member States shall apply for approval of the Commission to withhold such information from the public. The application must include detailed economic analysis supporting the Member State's request.***

Or. en

Amendment 29

Proposal for a directive ANNEX II - paragraph 3 - point b

Text proposed by the Commission

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

Amendment

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

Amendment 30

**Proposal for a directive
ANNEX II - paragraph 3 - point c**

Text proposed by the Commission

Amendment

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

deleted