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Committee on Economic and Monetary Affairs

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OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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

Draftsman: Joseph Muscat

PA_Leg

SHORT JUSTIFICATION

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

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

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

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

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

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

AMENDMENTS

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

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1 Title	
Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering**,** ***including*** terrorist financing.	Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering ***and*** terrorist financing. *(As a consequence of this amendment, the following technical changes should be made: "money laundering" should be replaced by "money laundering and terrorist financing" in recitals 10, 11, 21, 25, 26 and articles 4, 10.1(a), 10.1(c), 18, 29 and 37.1 introductory part; "money laundering" should be replaced by "money laundering or terrorist financing" in recitals 13 and 22 and in articles 2.2, 3(10), 6(c), 10.3, 11, 17, 19, 21, 22, 24, 25, 26, 30, 31, 37.1(b) and 37.1(c) ; the "Committee on the Prevention of Money Laundering" should be called "Committee on the Prevention of Money Laundering and Terrorist Financing" in recital 19 and article 38).*
Justification	
The draftsman considers that money laundering and terrorist financing are of different nature. As a consequence terrorist financing should not be considered as a form of money laundering.	
Amendment 2	

[1] Not yet published in OJ.

Recital 4

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

Justification

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

Amendment 3
Recital 4 a (new)

	(4 a) Despite the broadly shared objective of combating money laundering and terrorist financing, delays are still observed in the implementation of EU directives or Financial Action Task Force on Money

	Laundering (hereinafter referred to as the "FATF") recommendations. Member States should implement rapidly the related instruments already in place in order to avoid any distortions and to fight efficiently against organised crime.

Justification

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

Amendment 4
Recital 5

(5) Money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the Forty Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the "FATF"), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Forty Recommendations were substantially revised and expanded in 2003, the Community Directive should be brought into line with this new international standard.	(5) Money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora***, and the Community should ensure that third countries taking part in the work of the FATF also implement the FATF recommendations in their national legislation***. The Community action should continue to take particular account of the Forty Recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the "FATF"), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Forty Recommendations were substantially revised and expanded in 2003, ***and new Specific Recommendations on terrorist financing adopted*** , the Community Directive should be brought into line with this new international standard.

Amendment 5
Recital 8

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

Justification

Cf justification for amendment 1

Amendment 6
Recital 8 a (new)

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

Justification

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

Amendment 7
Recital 19

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

Justification

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

Amendment 8
Recital 29 a (new)

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

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

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

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

Justification

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

Amendment 9
Article 1, paragraph 1

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

Justification

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

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

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

Justification

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

Amendment 11
Article 1, paragraph 2, subparagraph 2

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

Justification

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

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

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

Justification

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

Amendment 13
Article 1, paragraph 2 a (new)

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

Justification

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

Amendment 14
Article 1, paragraph 2b (new)

2b. Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs 2

	and 2a may be inferred from objective factual circumstances.

Justification

Cf. supra.

Amendment 15
Article 3, point (4)

(4) "terrorism" means any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA[1].	***deleted***
[1] OJ L 164, 22.6.2002, p. 3.	

Justification

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

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

(a) ***the natural person who ultimately, directly or indirectly, owns or controls 10 % or more of the shares or of the voting rights of a legal person or who otherwise exercises a comparable influence over the management of a legal person, other than a company listed on an official stock exchange that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;***	(a) ***in the case of corporations***
	(i) the natural person or persons who is or are ultimately the owner or owners of a legal person by directly or indirectly holding a sufficient proportion of shares or voting rights of that legal person, including through the holding of bearer shares, or who in this way ultimately controls or

control such a legal person, other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Community legislation or subject to equivalent international standards; a share of 25% plus one share shall be deemed sufficient to meet this criterion;

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

Justification

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

Amendment 17
Article 3, point (8), point (b)

(b) the natural person who is ultimate beneficiary, directly or indirectly, of 10 % or more of the property of a foundation, a trust or similar legal arrangement or who exercises influence over a comparable quantity of the property of a foundation, a trust or a similar legal arrangement, other than a company listed on an official stock exchange that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;	(b) ***in the case of legal persons, for example foundations and legal arrangements, for example trusts which manage or distribute money:***
	(i) in so far as the future beneficiaries have already been designated, the natural person or persons who is or are the beneficiary or beneficiaries of at least 25% plus one share of the property of a legal arrangement or legal person;
	(ii) in so far as the individual persons who are the beneficiaries of the legal person or legal arrangement have not yet been

	designated, the group of persons in whose interests the legal person was primarily established or the legal arrangement takes effect;
	(iii) the natural person or persons who exercises or exercise essential control over at least 25% plus one share of the property of a legal arrangement or legal person;

Justification

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

Amendment 18
Article 3, point (10)

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

Justification

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

distinction toutes les personnes ayant une fonction publique, ce qui serait manifestement excessif.

Amendment 19
Article 3, paragraph 1 a (new)

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

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

(ii) equities listed on a regulated exchange

by a person holding the property in a pooled account on behalf of another financial institution acting as a depository institution.

Justification

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

Amendment 20
Article 3, paragraph 1 b (new)

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

Justification

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

Amendment 21
Article 6, point (d)

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

Justification

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

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

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

evidence of the company's registration from an independent source shall constitute reasonable measures;

Justification

This amendment had 3 aims: (i) Some trusts are set up to benefit a class of beneficiaries which may not all be identifiable at the start of the arrangement e.g. the descendants of an individual or the employees of a company. It is not possible to carry out money laundering checks on people who might not yet have been identified (or even born!). (ii) Identity checks should also be risk-based, with stricter checks being justified in cases of higher risk. (iii) The extent to which corporate entities need verification beyond that which is publicly available from public records should be restricted to companies registered in or with material links to higher risk jurisdictions which do not meet acceptable standards.

Amendment 23
Article 7, paragraph 1, point (b a) (new)

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

Justification

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

Amendment 24
Article 7, paragraph 1, point (d)

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

Justification

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

Amendment 25
Article 8, paragraph 1

1. Member States shall require that the ***institutions and persons covered by this Directive apply customer due diligence before or during the course of establishing a business relationship or executing a transaction for occasional customers.***	1. Member States shall require that the ***verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the execution of a transaction.***
	1a. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures should be completed as soon as practicable after the initial contact.
	1b. By way of derogation from paragraphs 1 and 1a, Member States may, in relation to
	i) life insurance business, allow the verification of the identity of the beneficiary under the policy to take place after having established the business relationship. In all such cases verification should take place at or before the time of payout or at or before the time the

	beneficiary intends to exercise rights vested under the policy
	ii) trusts, created within a Member State
	(a) provided that the trustees and settlor are resident in a Member State at the date of the creation of a trust and
	(b) the trustees remain so resident
	allow the verification of the identity of the beneficiaries of the trust to take place after having established the business relationship. In all such cases verification by the trustees need only take place at or before the time of distribution to that beneficiary and Member States may permit the need for third party identification and verification to be dispensed with on a risk based approach.

Justification

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

Amendment 26
Article 8, paragraph 2

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

	the event of continued non-compliance with the aforementioned provisions, the institution or person concerned shall not establish a business relationship or perform ***any*** transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit in accordance with Article 19 in relation to the customer. ***Member States shall not apply this provision to notaries, independent legal professionals, auditors, external accountants and tax advisers in the course of ascertaining the legal position of their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.***

Justification

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

Amendment 27
Article 8, paragraph 3

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

Justification

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

Amendment 28
Article 9, paragraph 1

1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of ***EUR 1000*** or more.	1. Member States shall require that all casino customers shall be identified and the identity verified if they purchase or exchange gambling chips with a value of ***EUR 3000*** or more.

Justification

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

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

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

Justification

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

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

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

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

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

Justification

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

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

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

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

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

Justification

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

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

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

Justification

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

Amendment 35
Article 11, paragraph 2

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

Justification

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

Amendment 36
Article 12, paragraph 2

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

Justification

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

Amendment 37
Article 12 a (new)

Article 12a

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

Justification

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

Amendment 38
Article 14, paragraph 2

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

Justification

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

Amendment 39
Article 15

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

Justification

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

Amendment 40
Article 16

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

Amendment 41
Article 18, paragraph 2

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

Justification

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

Amendment 42
Article 18, paragraph 2 a (new)

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

Justification

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

Amendment 43
Article 20, paragraph 2

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

Amendment 44
Article 21

Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have ***informed the financial intelligence unit***.	Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering ***or terrorist financing*** until they have ***complied with Article 19(1)(a)***.
The financial intelligence unit may, under conditions to be determined by the national legislation, give instructions not to execute the operation***.***	***In accordance with the legal provisions of the Member States, instructions may be given*** not to execute the operation***.***
Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the institutions and persons concerned shall apprise the financial intelligence unit ***immediately afterwards***.	Where such a transaction is suspected of giving rise to money laundering ***or terrorist financing*** and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation ***or terrorist financing***, the institutions and persons concerned shall apprise the financial intelligence unit ***of the necessary information***.

Justification

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

Amendment 45
Article 23

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

Justification

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

Amendment 46
Article 24

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

Justification

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

Amendment 47
Article 25, paragraph 1

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

authorities or disclosure for law enforcement purposes if provided for in national legislation.

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

Justification

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

Amendment 48
Article 29, paragraph 2 a (new)

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

Justification

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

Amendment 49
Article 29 a (new)

Article 29 a

Member States shall apply the derogation provided for in Article 13(1)(d) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1] when such

	derogation constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences related to money laundering.
	[1] OJ L 281, 23.11.1995, p. 31.

Justification

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

Amendment 50
Article 31, paragraph 3

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

Justification

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

Amendment 51
Article 37, paragraph 3 a (new)

	3a. In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with

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

Justification

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

PROCEDURE

Title	Proposal for a European Parliament and Council directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing
Procedure number	2004/0137(COD)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	ECON 13.10.2004
Enhanced cooperation	No
Drafts(wo)man Date appointed	Joseph Muscat 10.11.2004
Discussed in committee	22.10.2004 10.11.2004 18.1.2005 2.2.2005
Date suggestions adopted	22.2.2005
Result of final vote	for: 22 against: 0 abstentions: 22
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Udo Bullmann, Ieke van den Burg, Paolo Cirino Pomicino, Jillian Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Christopher Huhne, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Guntars Krasts, Astrid Lulling, Hans-Peter Martin, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Karin Riis-Jørgensen, Eoin Ryan, Manuel António dos Santos, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht
Substitutes present for the final vote	Jan Andersson, Jana Bobošíková, Harald Ettl, Satu Hassi, Ján Hudacký, Werner Langen, Sarah Ludford, Vladimír Maňka, Diamanto Manolakou, Andreas Schwab, Theresa Villiers
Substitutes under Rule 178(2) present for the final vote	Rosa Díez González