



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.6.2001  
COM(2001) 330 final

1999/0152(COD)

**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2) (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**amending Council Directive 91/308/EEC on prevention of the use of the financial system  
for the purpose of money laundering**

## **1. BACKGROUND**

On 19 July 1999 the Commission sent to the European Parliament and the Council a proposal for a directive<sup>1</sup> to amend the 1991 Directive<sup>2</sup> on prevention of the use of the financial system for the purpose of money laundering.

The Economic and Social Committee delivered its opinion<sup>3</sup> on 26 January 2000.

On 5 July 2000 the European Parliament adopted a first reading opinion<sup>4</sup> comprising 34 amendments to the Commission proposal.

The Council adopted its common position<sup>5</sup> on 30 November 2000.

On 12 January 2001 the Commission adopted its communication to the European Parliament<sup>6</sup> on the Council's common position.

On 5 April 2001 the European Parliament voted on second reading 15 amendments to the common position.

## **2. PURPOSE OF THE PROPOSAL**

The purpose of the proposal is to update and extend the 1991 anti-money laundering directive in line with the wishes of the Member States (Action Plan to combat organised crime) and of the European Parliament (Report A4-0093/99 – PE 228.303 fin). The main points are a widening of the prohibition of money laundering to cover a wider range of criminal activity and the inclusion in the scope of the directive of a range of non-financial activities and professions, including lawyers, for whom special safeguards are envisaged.

## **3. COMMISSION OPINION ON PARLIAMENT'S AMENDMENTS**

On second reading the European Parliament adopted 15 amendments to the Council's common position.

For the reasons set out below the Commission is unable to accept these amendments.

*Amendment 1* adds a new recital relating to predicate offences, i.e. the underlying criminal activity covered by the prohibition of money laundering. The Commission read this amendment in close relation to amendment 10, on the same subject, which was however not adopted. The Commission doubts whether the recital can meaningfully stand alone without the substantive provision to which it related. On the substance, the Commission believes that a coverage limited essentially to organised crime would be too narrow. On the question of definition, it concedes that organised crime as such may not be defined. On the other hand, the concept of "criminal organisation" is defined (Joint Action of 21 December 1998) and it is

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<sup>1</sup> COM(1999)352 final and OJ No C177 E, 27.6.2000, p.14.

<sup>2</sup> OJ No L 166, 28.6.1991, p.77.

<sup>3</sup> OJ C 75, 15.3.2000, p.22.

<sup>4</sup> Report A5-0175/2000.

<sup>5</sup> OJ No C 36, 2.2.2001, p.24.

<sup>6</sup> SEC(2001)12 final.

to this definition that the common position makes reference. The Commission agrees that the directive is one of the means of protecting the Communities' financial interests but does not believe that a reference to Article 280 is strictly necessary.

*Amendment 5* covers essentially the same ground as recital 16 of the common position, which remains the Commission's preferred text. The amendment raises the issue of partnerships, which is, however, not taken up in the articles. The amendment also makes reference to "legal advice", which concept is not defined. The Commission fully agrees that it is necessary to safeguard the role of the lawyer (and notary) when representing the client in proceedings or when advising the client on his situation under the law. The Commission believes that these safeguards are provided under the common position and has a strong preference for the concept of ascertaining the client's legal position, which it feels is more precise than the concept of legal advice.

*Amendment 9* would add a fifth category to be covered by the definition of "financial institutions", namely certain market supervisory authorities. The other four categories cover non-bank commercial providers of financial services. As such these "financial institutions" must identify their clients and report any suspicions of money laundering to the authorities. The Commission cannot see the rationale for including market supervisory authorities in the definition of financial institutions. The Commission would recall that the role of competent authorities responsible for supervising credit or financial institutions is already dealt with in Article 10 of the 1991 Directive. If these competent authorities suspect money laundering in the institutions they supervise, they must report these suspicions to the relevant anti-money laundering authorities.

*Amendment 11* amends the wording of the definition of "competent authorities". The precise objective of this amendment is not clear to the Commission. The intention of the Council is made clear in recital 18 of the common position text, namely that the directive does not oblige Member States to create competent (supervisory) authorities where they do not already exist. This means, for example, that if a Member State does not have a competent authority for estate agents or dealers in precious metals or stones, the directive would not require it to establish such authorities. Even if this approach might make it more difficult to monitor the correct application of the obligations of the directive, the Commission believes that this is the most practical approach.

*Amendment 14* is concerned with various non-financial activities which Parliament wishes to be brought within the scope of the directive.

The common position text refers to "dealers in high-value items, such as precious stones or metals, whenever payment is made in cash, and in an amount of € 15 000 or more". Parliament's amendment would delete the words "such as" as well as the reference to cash payment and the threshold of €15 000. It also adds a reference to "works of art". To avoid imposing excessive requirements on these dealers the Commission much prefers to maintain the application only in respect of large cash transactions. Regarding "works of art", the Commission would be concerned by the potentially very wide coverage of this provision and the absence of any definition of what is meant by "works of art".

With respect to Parliament's wish to include "persons selling luxury goods at a sale price over €50 000", the Commission would again be concerned about the lack of any definition of "luxury goods" and about the (admittedly general) problem of controlling the application of such obligations.

On the inclusion of auctioneers, where the proceeds of the auction of a single lot exceed €15 000, the Commission has an open position. It believes, however, that such an inclusion would merit a detailed discussion, which hitherto has not taken place.

Regarding security companies which transport money, the Commission would note that its original proposal included transporters of funds. However, this activity was deleted from the directive at the request of a large majority of the Member States, which considered this inclusion to be unnecessary. The Commission accepted this majority position.

Parliament's text on the coverage of casinos is close to the Commission's original proposal. The Commission believes that the best way to include the persons directly involved in the operation of casinos merits further examination.

Lastly, the Commission sees no need to include customs and tax officials. These are not persons engaged in a commercial enterprise and as public officials would normally be under an obligation to report criminal activities of which they become aware to the appropriate authorities.

*Amendment 18* raises two points, one of legal drafting (how to refer to the life insurance directives) and a more substantive point relating to the thresholds determining exemption from the customer identification obligation in respect of certain insurance contracts. On the first point the Commission continues to believe that the appropriate reference is to the first life insurance directive of 1979, which defines life insurance undertakings. Regarding Parliament's wish to raise the thresholds for exemption, the Commission agrees that the amounts in question, which were fixed in 1991, might now need to be reviewed. It believes, however, that any such review would have to be based on a detailed technical examination of the issues raised. This work should be pursued within the Money Laundering Contact Committee.

*Amendments 19 and 20* deal with the matter of customer identification in casinos. The Commission believes that Parliament's amendments seek to achieve basically the same result as the common position text. However, the Commission has a preference for the text of the common position since it is more specific on the money laundering dangers (purchase of chips for cash or exchange of chips for a casino cheque). Parliament's preferred threshold of €1 000 is also too low in the Commission's opinion.

*Amendments 21 and 24* constitute, in the Commission's view, a breach of the basic anti-money laundering rule that the customer on whom a money laundering suspicion report is made should not be warned of this fact. The Commission believes that this rule should be maintained even in the case of the professions.

*Amendment 22* seeks to turn an optional provision of the common position ("Member States shall not be obliged to apply...") into an obligatory provision ("Member States shall not apply...").

Article 6(1) deals with the obligation to report suspicions of money laundering. The initial Commission proposal envisaged that Member States should not be obliged to apply this obligation in respect of information received by notaries and lawyers in fulfilling their traditional role of representing clients in legal proceedings. In the course of discussions in the Council it was deemed necessary, in order to ensure compatibility with the European Human Rights Convention, also to refer to the situation where the lawyer is helping the client to ascertain his legal position. As part of the final compromise in the Council, and given the

differing role and organisation of the professions in the different Member States, the Member State option not to apply the reporting obligation in the above two cases was extended to the other professions, namely the auditors, external accountants and tax advisors. The Commission reluctantly accepted this extension, which, in its view, went beyond what was strictly necessary.

Given the need to ensure compatibility with the Human Rights Convention, the Commission has some sympathy for Parliament's wish to make it obligatory not to require the reporting of suspicions of money laundering formed on the basis of information obtained by lawyers and notaries when assisting their clients in legal proceedings or in ascertaining their position under the law. The Commission does not accept, however, that the same considerations apply generally in respect of the non-legal professions. It believes that Parliament's amendment would provide an excessive exemption for the non-legal professions and would render their inclusion in the directive virtually meaningless.

*Amendment 23.* The 1991 Directive states (final paragraph of Article 6) that information obtained by the anti-money laundering authorities via suspicious transaction reports may only be used for the purpose of combating money laundering. However, the text continues by stating that "However, Member States may provide that such information may also be used for other purposes". Parliament's amendment would delete this latter sentence.

This provision was included in the 1991 Directive because suspicious transaction reports might, for example, point to criminal activity which, while not constituting money laundering for the purposes of the Directive, nevertheless needed to be investigated and possibly combated. The Commission is not aware of any problems created by this Member State option and believes that it should be retained.

*Amendment 25.* The 1991 Directive lays down the principle that suspicious transaction reports made in good faith should not result in liability of any sort under civil or criminal law for the person making the report. This would apply even if it transpires that the suspicions were unfounded. Parliament's amendment would replace the criterion of "good faith" by a test based on whether the information disclosed was "untrue deliberately or owing to gross negligence". As far as the Commission is aware, the good faith test has not given rise to problems in practice. It also corresponds to the relevant international standard (the 40 Recommendations of the Financial Action Task Force). The Commission sees no need to change the directive on this point.

*Amendment 26* seeks to reinstate a provision of the original Commission proposal (new Article 12(2)) which would have given the Commission (in the form of OLAF) a role in co-operation with and the exchange of information between the Member States' anti-money laundering authorities in matters affecting the Communities' financial interests. It was finally decided in the discussions in the Council that this important element of the Commission proposal required separate and detailed discussion. The Council therefore called on the Commission to table a separate proposal based on Article 280 of the Treaty. The Commission accepted this approach and is currently in the process of formulating this proposal. The Commission therefore believes that this amendment is unnecessary.

*Amendment 27* covers similar ground to amendment 26 and makes specific reference to OLAF. Given that relations between OLAF and the Member States' anti-money laundering authorities in matters affecting the Communities' financial interests are to be dealt with in a separate legal instrument, the Commission sees no need to make reference to OLAF in the money laundering directive.

#### **4. CONCLUSIONS**

The Commission therefore rejects all the amendments voted by the European Parliament on second reading.