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REPORT

on the proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering
(COM(1999) 352 – C5-0065/1999 – 1999/0152(COD))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Klaus-Heiner Lehne

Draftsman*: Diemut R. Theato, on behalf of the Committee on Budgetary Control

(*Hughes procedure)

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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(*HUGHES procedure)

PROCEDURAL PAGE

By letter of 19 July 1999 the Commission submitted to the European Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 - 1999/0152(COD)).

At the sitting of 25 October 1999 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Budgetary Control and the Committee on Economic and Monetary Affairs for their opinions (C5-0065/1999). At the sitting of 18 February 2000 the President of Parliament announced that she had also referred the proposal to the Committee on Legal Affairs and the Internal Market for its opinion.

At the sitting of 19 November 1999 the President announced that the report would be drawn up by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Budgetary Control in accordance with the Hughes procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Mr Lehne rapporteur at its meeting of 29 July 1999.

It considered the Commission proposal and the draft report at its meetings of 28 September, 23 November and 6 December 1999 and 27 January, 13 March, 5 June and 21 June 2000.

At the last meeting it adopted the draft legislative resolution with by 33 votes to 0, with 3 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Klaus-Heiner Lehne, rapporteur; Mary Elizabeth Banotti, Maria Berger (for Anna Karamanou), Christian von Boetticher, Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Carmen Cerdeira Morterero (for Margot Keßler), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Olivier Duhamel, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Evelyne Gebhardt (for Joke Swiebel), Daniel J. Hannan, Adeline Hazan (for Gerhard Schmid), Christopher Heaton-Harris (for Timothy Kirkhope pursuant to Rule 153(2)), Ewa Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Francesco Musotto (for Thierry Cornillet), Hartmut Nassauer, Elena Ornella Paciotti, Ana Palacio Vallelersundi (for Bernd Posselt), Hubert Pirker, Martin Schulz, Sérgio Sousa Pinto, Fodé Sylla, Anna Terrón i Cusí, Alexandre Varaut (for Mogens N.J. Camre), Gianni Vattimo, Dominique Vlasto (for Enrico Ferri) and Jan-Kees Wiebenga,

The opinions of the Committee on Budgetary Control, the Committee on Economic and

Monetary Affairs and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 21 June 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 – C5-0065/1999 – 1999/0152(COD))

This proposal is amended as follows:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) Recital 10a (new)	
	(10a) Whereas it would be desirable for all Member States to establish regulatory authorities with specific responsibility for overseeing the activities of currency exchange offices (« bureaux de change ») and money transmitters (« money remittance offices ») in order to ensure the proper enforcement of this Directive.
Justification : *Such organisations are insufficiently regulated at present. The Directive can only be enforced properly if these organisations are subject to proper oversight.*	
(Amendment 2) Recital 15	
(15) Whereas the Directive imposes obligations regarding in particular the reporting of suspicious transactions; whereas it would be more appropriate and in line with the philosophy of the Action Plan to Combat Organised Crime for the prohibition of money laundering under the Directive to be extended to cover not only drugs offences but all organised crime activities***, as well as fraud, corruption and any other illegal activities affecting the financial interests of the Communities, as referred to in Article***	(15) Whereas the Directive imposes obligations regarding in particular the reporting of suspicious transactions; whereas it would be more appropriate and in line with the philosophy of the Action Plan to Combat Organised Crime for the prohibition of money laundering under the Directive to be extended to cover not only drugs offences but all organised crime activities;

[1] Not yet published in the Official Journal.

280 of the Treaty;

Justification:

The ban on money laundering laid down in the directive should apply clearly and exclusively to organised crime activities. The scope of the ban thus embraces fraud, corruption and other illegal activities to the detriment of the financial interests of the Community when these offences are perpetrated by members of organised crime groups. It makes little sense to deal separately with illegal activities against the Community budget rather than, for example, against the public authorities in general, particularly as this is hardly feasible in practice.

(Amendment 3)
Recital 16

(16) Whereas, in the case of such fraud, corruption and other illegal activities, the Member State authorities responsible for combating money laundering and the Commission should cooperate with each other and exchange relevant information;	***Deleted***

Justification:

The ban on money laundering laid down in the directive is not intended to apply generally to fraud, corruption or other illegal activities affecting the interests of the Community.

(Amendment 4)
Recital 16a (new)

	(16a) Whereas a uniform definition of organised crime does not yet exist at either international or European Union level; whereas a more precise definition of the term should nonetheless be adopted for the purposes of this Directive;

Justification:

It is necessary in the context of this directive to define what is meant by 'organised crime'.

(Amendment 5)
Recital 22a (new)

(22a) Whereas the provisions relating to credit and financial institutions cannot be adopted unchanged in this context;

Justification:

Various provisions of the directive are not applicable to the professions now included in its scope and must therefore be adapted.

(Amendment 6)
Recital 23

(23) Whereas notaries and independent legal ***professionals*** should be made subject to the provisions of the Directive when performing a limited number of specific financial or corporate transactions where there is the greatest risk of ***the*** services ***of those legal professionals*** being misused for the purpose of laundering the proceeds of drugs trafficking or organised crime;	(23) Whereas notaries and independent legal ***or tax consultants and accountants and their employees*** should be made subject to the provisions of the Directive when performing a limited number of specific financial or corporate transactions where there is the greatest risk of ***their*** services being misused for the purpose of laundering the proceeds of drugs trafficking or organised crime;

Justification:

It must be made clear that this directive applies to all legal and tax consultants. It is also appropriate for accountants to be subject to the same conditions as legal and tax consultants.

(Amendment 7)
Recital 23a (new)

(23a) Whereas the obligations laid down in the Directive should apply to a lawyer, tax consultant, notary or accountant only if he/she is involved to a significant extent in the activities of his/her client; whereas this means, for example, that the simple act of drawing up a draft contract of sale or a draft partnership agreement would not trigger the obligations laid down in the Directive; whereas those obligations would be triggered only by the representation of

	his/her client by the lawyer, in which connection representation will cover not only acting as the client's agent, for example in connection with the conclusion of contracts, but any active participation, for example in negotiations;

Justification:

It is necessary to define clearly the cases in which lawyers, tax consultants, notaries and accountants must fulfil the obligations laid down in this Directive.

(Amendment 8)
Recital 24

(24) Whereas, however, where an independent lawyer or law firm is representing a client in ***formal*** legal proceedings it would not be appropriate under the directive to put the lawyer under an obligation to report suspicions of money laundering;	(24) Whereas, however, where an independent lawyer or law firm***, member of a regulated legal profession,*** is representing a client in legal proceedings ***or engaged solely in independent legal counselling*** it would not be appropriate under the directive to put the lawyer under an obligation to report suspicions of money laundering;

Justification:

Any activity undertaken by a lawyer or law firm, not only the representation of a client in legal proceedings, is subject to the obligation of secrecy.

(Amendment 9)
Article 1(A)

(A) 'Credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community,	(A) 'Credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community, ***as last amended by Article 1 of Directive …/…/EC on the taking up, the pursuit and the prudential supervision of the business of electronic money***

institutions.

Justification:

Because 'credit institutions' as defined by Directive 77/780/EEC would be amended by two Commission proposals, the one 'electronic money institutions' (COM (1998)0461 – C4-0531/1998), the other amending Directive 77/780/EE in order to include the 'electronic money institutions' (COM(1998) 0461 – C4-0532/1998 and because the EP resolution of 9 March 1999 on the 2nd Commission report on the implementation of the money laundering directive requested the Commission and the ECB to submit proposals that would 'minimise the risks of money laundering in the context of electronic money' (para. 15).

(Amendment 10)
Article 1(B)(3)

(3) an investment firm as defined in Article 1 of Directive 93/22/EEC;	(3) an investment firm as defined in Article 1 of Directive 93/22/EEC, ***and a management company as defined by Article 1 (3) of Directive 85/611/EEC on UCITS as last amended by Article 1a of Directive …/…/EC.***

Justification :

Because the Commission proposals COM(1998) 449 and COM(1998) 451 seek to amend the UCITS directive 85/611/EEC in such a way that the management company in its enlarged role and functions would be responsible for the activities of undertakings the object of which is the collective investment in transferable securities and in money market instruments; such activities would be similar in nature but not in objective to the investment firm. Hence management companies should be legally and factually covered by the scope of the money laundering directive.

(Amendment 11)
Article 1(B)(3a) (new)

	(3a) supervisory authorities empowered by law or regulation to supervise the stock exchange, foreign exchange and financial derivatives markets.

Justification :

Because the scope of this directive should cover under financial institutions a fourth category which would include supervisory authorities responsible for financial services and markets. The

inclusion is particularly important because of competition-related aspects that may arise if some actors and actives in the financial sector are not covered, creating thus unfair competition.

(Amendment 12)
Article 1(E), second indent

- participation in activities linked to organised crime,	- participation in activities linked to organised crime, ***meaning the activities of persons who act in concert with a view to committing offences and who belong to criminal organisations which have a structure and which were established with a view to committing more than one offence***,

Justification:

A definition of organised crime is needed if it is to be accepted as a predicate offence in connection with the money laundering.

(Amendment 13)
Article 1(E), third indent

- fraud, corruption, ***or any other illegal activity damaging or likely to damage the European Communities' financial interests and***	- fraud, corruption***, provided they affect the financial interests of the European Union and are covered by Article 1(e) of the Second Protocol of 19 June 1997 to the Convention on the protection of the financial interests of the European Union[(1)]***, ***(1) OJ C 221, 19.7.1997, p. 12***

Justification:

This definition is based on the rules which already exist in the European Union. The Second Protocol of 19 June 1997 contains a rule stating that measures to combat money laundering in connection with fraud damaging to the financial interests of the European Union should be taken only when serious offences have been committed. Moreover, the Commission proposal is also unworkable because the concept of 'illegal activities' goes well beyond the purely criminal sphere.

(Amendment 14)
Article 1(F)

(F) ‘Competent authorities’ means the	(F) 'Competent authorities’ means the

national authorities ***empowered by law or regulation to supervise any of the institutions or persons subject to this Directive***.	national authorities ***designated by the Member State for the institutions and persons concerned***.

Justification:

Not all the Member States have supervisory authorities for the institutions and persons now included in the scope of the directive.

(Amendment 15)
Article 2a(3)

(3) external accountants and auditors;	***Delete***

Justification:

The same conditions should apply to external accountants and auditors as to independent legal and tax consultants.

(Amendment 16)
Article 2a(5)

(5) notaries and ***other*** independent legal ***professionals*** when ***assisting or*** representing clients in respect of the:	(5) notaries and independent legal ***and tax consultants and accountants and their employees*** when representing clients in respect of the:
(a) buying and selling of real property or business entities	(a) buying and selling of real property or business entities
(b) handling of client money, securities or other assets	(b) handling of client money, securities or other assets
(c) opening or managing bank, savings or securities accounts	(c) opening or managing bank, savings or securities accounts
(d) creation, operation or management of companies, trusts or similar structures	(d) creation, operation or management of companies, trusts or similar structures
(e) execution of any other financial transactions	(e) execution of any other financial transactions;
	The obligations laid down in this Directive shall not apply to independent lawyers or law firms,

	members of regulated legal professions, with regard to information they receive from a client if engaged solely for independent legal counselling or in order to be able to represent him in legal proceedings.

Justification:

It must be made clear that the directive applies to all legal consultants, including, for example, tax consultants, but only when they are representing clients in respect of the activities referred to in Article 2a(5). It is also appropriate for accountants to be subject to the same conditions as legal and tax consultants.

(Amendment 17)
Article 2a(6)

(6) dealers in high-value goods, such as precious stones or metals	(6) dealers in high-value goods, such as precious stones or metals ***or art***

Justification :

The risk of money laundering exists in the case of art dealers just as it does in the case of dealers in precious stones and metals dealers.

(Amendment 18)
Article 2a(6a) (new)

	(6a) persons selling luxury goods at a sale price in excess of EUR 50 000;

Justification:
The group of persons added, like those already referred to in the proposal for a directive, may in the exercise of their profession come across facts which raise suspicion of money laundering.

(Amendment 19)
Article 2a(6b) (new)

	(6b) auctioneers;

Justification:

The group of persons added, like those already referred to in the proposal for a directive, may in the exercise of their profession come across facts which raise suspicion of money laundering.

(Amendment 20)
Article 2a(9) (new)

	(9) customs and tax officials in connection with the obligations set out in Article 6;

Justification:
The group of persons added, like those already referred to in the proposal for a directive, may in the exercise of their profession come across facts which raise suspicion of money laundering.

(Amendment 21)
Article 3(1)

(1) Member States shall ensure that the institutions ***and persons*** subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.	(1) Member States shall ensure that the ***institutions referred to in Article 2a(1) and (2)*** subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.

Justification:

Credit and financial institutions can certainly be expected to identify customers when entering into business relations. The identity of customers should always be established when business relations are entered into, but this will be difficult in the case of various of the professions now included in the scope the directive (in the case of estate agents, for example, a request by telephone for information on a specific property in itself gives rise to the obligation to pay a commission and thus to enter into business relations) and does not appear necessary to prevent money laundering.

(Amendment 22)
Article 3(2)

(2) ***The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1,*** involving a sum amounting	(2) ***All the institutions and persons referred to in Article 2a shall identify their customers in any transaction undertaken with their participation and***

to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.	involving a sum amounting to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.
Where an institution establishes business relations or enters into a transaction with a customer who has not been physically present for identification purposes ('non-face to face operations') the principles and procedures laid down in the Annex shall apply.	

Justification:

The identification of the customer by all institutions and persons covered by the directive is appropriate provided that transactions are actually undertaken and involve a minimum of Euro 15 000.

(Amendment 23)
Article 3(2a) (new)

	(2a) Where an institution establishes business relations or enters into a transaction with a customer who has not been physically present for identification purposes ('non-face-to-face operations'), the following principles shall apply:
	(a) Cash transactions may not be non-face-to-face operations.
	(b) In connection with the opening of an account, the identity of the person must be established and certified by an official document issued by an authorised state body.

	(c) The first payment in a transaction must be made via an account in the client's name held with a credit institution established in the European Union or the European Economic Area. Member States may authorise payments by respected third-country credit institutions if the latter apply equivalent provisions to combat money laundering.
	(d) The internal control procedures carried out pursuant to Article 11(1) of the Directive shall take particular account of non-face-to-face operations.

Justification:

The directive must incorporate certain vital fundamental rules governing non-face-to-face operations, even if they do not include the details set out in the annex.

(Amendment 24)
Article 3(3)

By way of derogation from paragraphs ***1 and 2,*** the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive ***79/267/EEC***, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed Euro ***1 000*** or where a single premium is paid amounting to Euro ***2 500*** or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the Euro ***1 000*** threshold, identification shall be required.	By way of derogation from ***the above*** paragraphs the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive ***92/96/EEC***, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed Euro ***3 000*** or where a single premium is paid amounting to Euro ***10 000*** or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the Euro ***3 000*** threshold, identification shall be required.

Justification:

The first life assurance directive has been amended and expanded by the third life assurance directive. The third life assurance directive should therefore be used as the point of reference. By comparison with the sum of EUR 15 000 or more, referred to in Article 3(2), which triggers the identification requirement in connection with bank customers, the corresponding sum in respect

of persons seeking to conclude an insurance policy with an approved insurance undertaking is too low.

(Amendment 25)
Article 3(3b) (new)

(3b) Casinos subject to state supervision shall be deemed to have complied with the identification requirement laid down in this Directive if they register and identify their customers when they enter the casino, regardless of the sum they exchange for gambling chips.

Justification:
In its proposed form, the directive is virtually impossible to administer without seriously disrupting gambling. In this connection, state casinos in particular currently maintain higher standards by requiring customers to register as they enter.

(Amendment 26)
Article 6(3)

(3) In the case of the independent ***legal professionals*** referred to in point 5 of Article 2a, Member States may designate as the authority referred to in paragraph 1 of this Article the bar association or appropriate self-regulatory body of the profession concerned and in such case shall lay down the appropriate forms of cooperation between them and the other authorities responsible for combating money laundering.	(3) In the case of the independent ***professions*** referred to in point 5 of Article 2a, Member States may designate as the authority referred to in paragraph 1 of this Article the bar association or appropriate self-regulatory body of the profession concerned and in such case shall lay down the appropriate forms of cooperation between them and the other authorities responsible for combating money laundering.
Member States shall not be obliged to apply the obligations laid down in paragraph 1 to ***such legal professionals*** with regard to information they receive from a client in order to be able to represent him in legal proceedings. ***This derogation from the obligations laid down in paragraph 1 shall not cover any case in which there are grounds for suspecting that advice is being sought for the purpose of facilitating money laundering.***	The obligations laid down in paragraph 1 ***shall not apply*** to ***legal consultants*** with regard to information they receive from a client in order to be able to represent him in legal proceedings.

Justification:
This amendment is needed if Amendment 16 to Article 2a(5) is adopted.

(Amendment 27)
Article 6(4)

(4) Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering. ***However, Member States may provide that such information may also be used for other purposes.***	(4) Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering.

Justification:
The last sentence of Article 6(4) is excessive and probably conflicts with the European Convention on Human Rights

(Amendment 28)
Article 8

Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.	Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out***, unless the person or institution concerned is required to do so by legislation relating to the profession concerned***.

Justification:
Besides the statutory obligation of secrecy, there is a statutory duty to warn clients with a view to protecting them from harm.

(Amendment 29)
Article 9

The disclosure ***in good faith*** to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of the information	The disclosure to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of the information referred to in

referred to in Articles 6 and 7 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.	Articles 6 and 7 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 ***unless the disclosure is deliberate or the information disclosed is untrue owing to gross negligence***.

Justification:

The scope of the directive is extended by this amendment to include various professions in which small firms or even individuals frequently engage and which are not subject to any legal supervision. To prevent abuse and to ensure that a degree of care is exercised, the words 'in good faith' are therefore no longer adequate and should be replaced with more precise wording.

(Amendment 30)
Article 11

Member States shall ensure that credit and financial institutions: ***1.*** establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, ***2.*** take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.	**1.** Member States shall ensure that credit and financial institutions: ***(a)*** Establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, ***(b)*** take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases. ***2. Member States shall ensure that the institutions and persons governed by this Directive have access to up-to-date information on the practices of money launderers and on evidence leading to the recognition of suspicious transactions***.

Justification:

If the required willingness to cooperate is to be ensured, the demands made by the directive on

persons now included in its scope must remain reasonable in view of the structure and working methods of these professions.

(Amendment 31)
ARTICLE 1, POINT 11
Article 12(2)

2. In case of fraud, corruption or any illegal activity damaging or likely to damage the European Communities' financial interests, the anti-money laundering authorities referred to under article 6 and, within its competences, the Commission, shall collaborate with each other for the purpose of preventing and detecting money laundering. To this end they shall exchange relevant information on suspicious transactions. Information thus exchanged shall be covered by rules of professional secrecy.	2. In case of fraud, corruption or any illegal activity damaging or likely to damage the European Communities' financial interests, the anti-money laundering authorities referred to under article 6 and, within its competences, the Commission, shall collaborate with each other for the purpose of preventing and detecting money laundering. To this end they shall exchange relevant information on suspicious transactions. Information thus exchanged shall be covered by rules of professional secrecy. ***The services of the Commission may take all necessary initiatives in this respect***.

Justification

It is sensible to point out that the services of the Commission may take the initiative.

(Amendment 32)
ARTICLE 1, POINT 11
Article 12(2a) (new)

	2a. OLAF or, where applicable and if established, the office of a European public prosecutor shall be able to pursue its activities within the scope of this Directive without any restrictions.

Justification

OLAF already has investigative powers. If the financial interests of the European Communities were at stake, these powers should not be limited.

(Amendment 33)
Annex

Identification of customers (physical persons) by credit and financial institutions in non-face-to-face financial operations. Within the framework of the Directive, the following principles should apply to the identification procedures for non-face-to-face financial operations:

(i) The procedures should ensure appropriate identification of the customer.

(ii) The procedures may apply provided there are no reasonable grounds to believe that face-to-face contact is being avoided in order to conceal the true identity of the customer and there is no suspicion of money laundering.

(iii) The procedures should not apply to operations involving the use of cash.

(iv) The internal control procedures stipulated in Article 11(1) of the Directive should take specific account of non-face-to-face operations.

(v) When the counterpart of the institution undertaking the operation ('contracting institution') is a customer, identification may be carried out by the following procedures:

(a) Using the contracting institution's branch or representative office which is nearest the customer in order to carry out a face-to-face identification

Deleted

(b) If the identification is carried out without a face-to-face contact with the customer:

- ***A copy of the customer's official identification document or the official number of the identification document should be required. Special attention should be paid to the verification of the customer's address when this is indicated on the identification document (e.g. documents concerning the operation to be sent by registered mail with advice of receipt to the customer's address).***
- ***The first payment of the operation should be carried through an account opened in the customer's name with a credit institution located in the European Union or in the European Economic Area. States may allow payments carried out through reputable credit institutions established in third countries which apply equivalent anti money laundering standards.***
- ***The contracting institution should carefully verify that the identities of the holder of the account through which the payment is made and of the customer, as indicated in the identification document (or ascertained from the identification number) are one and the same. In the case of doubt in this regard, the contracting institution should contact the credit institution with which the account is opened in order to confirm the identity of the account holder. If***

the doubt still remains a certificate from the credit institution should be required attesting to the identity of the account holder and confirming that the identification was properly carried out and that the particulars have been registered according to the Directive.

(c) In the case of certain insurance operations, identification requirements may be waived when the payment 'is to be debited from an account opened in the customer's name with a credit institution subject to this Directive' (Article 3(8)).

(vi) When the counterpart of the contracting institution is another institution acting on behalf of a customer:

(a) If the counterpart is located in the European Union or in the European Economic Area, identification of the customer by the contracting institution is not required (Art. 3(7) of the Directive).

(b) If the counterpart is located outside the European Union and the European Economic Area, the institution should check the identity of its counterpart (unless it is well known), by consulting a reliable financial directory. In the case of doubt in this regard, the institution should seek confirmation of its counterpart's identity from the third country supervisory authorities. The institution should also take 'reasonable measures to obtain information' on the customer of its counterpart (beneficial owner of the operation) (Art. 3(5) of the

Directive). These 'reasonable measures' could go from simply requesting the name and address of the customer, when the country applies equivalent identification requirements, to requesting a counterpart's certificate stating that the customer's identity has been properly verified and registered, when in the country in question the identification requirements are not equivalent.

(vii) ***The above-mentioned procedures do not preclude the use of other ones which, in the opinion of the competent authorities, may provide equivalent safety for the identification in non-face-to-face financial operations.***

Justification:

The detailed provisions set out in the annex are much too complicated and are unworkable. It would make more sense to incorporate a general clause into Article 3. Moreover, the first directive on money laundering from 1991 contains no such detailed annex. The Member States have thus far taken sufficient steps to ensure that the provisions on identification in connection with non-face-to-face operations have been properly implemented with a view to combating money laundering. Not least in the light of the subsidiarity principle, the Member States should be left to lay down the relevant detailed provisions.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 – C5-0065/1999 – 1999/0152(COD))

(codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(1999) 352)[2],

– having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0065/1999),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on Legal Affairs and the Internal Market and the Committee on Economic and Monetary Affairs (A5-0175/2000),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[2] Not yet published in the Official Journal.

EXPLANATORY STATEMENT

1. Contents of and background to the Commission proposal

1.1 The 1991 directive

The fight against money laundering at the level of the European Union began in 1991 with the adoption of the directive on prevention of the use of the financial system for the purpose of money laundering[3], which the Commission is now proposing should be amended. The aim of this directive is primarily preventive, since it is meant ideally to help defend the financial system in such a way as to deter potential money launderers from using it for money-laundering purposes.

The directive prohibits money laundering, but does not explicitly make it a punishable offence. The only act prior to money laundering to be identified in the directive is drug trafficking, the inclusion of other criminal activities being left to the individual Member States' discretion.

The Member States are required to ensure that credit and financial institutions identify their customers when entering into business relations with them and to keep vouchers and documents for set periods.

The key provision of the directive, however, is that credit and financial institutions are required to cooperate with the authorities, i.e. banking secrecy is waived where money laundering is suspected. Credit and financial institutions must on their own initiative disclose to the appropriate authorities any facts that may be evidence of money laundering. Provided that such disclosures are made 'in good faith', they do not have any adverse consequences for the institution or its managers. Institutions must not undertake suspicious operations without previously informing the appropriate authorities.

The Member States are also required to extend the provisions of the directive in whole or in part to include other professions and categories of undertakings if they are particularly likely to be used for money-laundering purposes.

1.2 Past experience with the directive and the fight against money laundering

Since the directive entered into force, the Commission has submitted two reports on its implementation to the European Parliament and the Council. In them it registers as an initial success the fact that the adoption of the directive has resulted in money laundering meanwhile becoming a punishable offence in all Member States.

Satisfactory data on other effects the directive has had, however, are not yet available. Although there are figures on the suspicious transactions reported, it has not yet been possible to prove any links between reports of suspicious transactions and convictions for money laundering or predicate offences. From what information is available it is evident that both the numbers of convictions and the sums confiscated have been very small.

[3] OJ L 166, 28.6.1991, p. 77.

This reflects the two cardinal problems associated with the fight against money laundering: the recognisability of the act of money laundering and proof of a causal relationship between the basic offence and the act of money laundering. The practices of money launderers have been described in detail in various documents (reports of the Financial Action Task Force, the UNDCP World Drug Report). They are extremely sophisticated and change with the circumstances by seizing new technological opportunities and reacting to more stringent legislation or different legal situations. In practice, completely legitimate transactions are often hardly distinguishable from money laundering activities, and it may therefore be extremely difficult to recognise money laundering as such. As a rule, a conviction for money laundering requires evidence of a causal relationship between the basic offence and the act of money laundering. This is often virtually impossible.

Despite these difficulties, the directive has had a generally preventive impact. This is evident, for example, from an obvious increase in efforts to identify and seize opportunities for money laundering outside the traditional financial sector. This in turn reveals a shortcoming of the directive, which is binding only in respect of credit and financial institutions. Although Article 12 requires the Member States to extend it in whole or in part to professions and categories of undertakings which are particularly likely to be used for money-laundering purposes, it fails to define the activities concerned, and practices in the Member States therefore differ.

Much the same applies to acts prior to money laundering. Here again, the directive is binding only in respect of drug trafficking, the Member States being permitted to define other criminal activities. The Member States' lists of predicate offences differ accordingly.

1.3 The European Parliament's and Council's demands

These shortcomings were identified by the European Parliament at an early stage. In its resolution of 21 June 1996 on the first Commission report on implementation of the money laundering directive[4], for example, it called on the Commission to submit by 5 March 1998 a proposal for the revision of this directive to include within its direct scope those occupations and types of enterprise which can definitely be considered to be involved or likely to be involved directly or indirectly in money laundering. In its resolution of 9 March 1999 on the second report on the implementation of the directive[5] the European Parliament reiterated this call, specifically demanding that such an amendment comprise:

1…(a) the inclusion in the directive of professions at risk of being involved in money laundering or abused by money launderers, such as estate agents, art dealers, auctioneers, casinos, bureaux de change (exchange offices), transporters of funds, notaries, accountants, advocates, tax advisors and auditors in the scope of the directive with a view to:
– fully or partially applying to them the rules contained therein or, if necessary,
– applying to them new rules taking account of the particular circumstances of these professions, and especially having full regard to their professional duty of discretion, …

[4] OJ C 198, 8.7.1996, p. 245
[5] OJ C 175, 21.6.1999, p. 39

In the former resolution Parliament also called on those Member States that had not yet done so to extend their legislation on combating money laundering not only to money derived from drug trafficking but to all money acquired from professional and organised crime.

The Council has made a similar appeal in the action plan to combat organised crime. Recommendation 26 of this action plan calls for the notification requirement in the money laundering directive to be extended to all offences connected with serious crime and to persons and professions other than the credit and financial institutions referred to in the directive.

1.4 The Commission's proposal for the amendment of the directive

With the amending proposal it has now submitted the Commission complies with these demands from the European Parliament and the Council.

The proposal is meant to update and expand on the following important aspects of the 1991 directive:

1. The list of predicate offences is extended, i.e. money laundering within the meaning of the directive no longer concerns only proceeds from drug trafficking but also participation in activities connected with organised crime and fraud, corruption and other illegal activities affecting the European Communities' financial interests.

2. The obligations imposed by the directive are extended without qualification to include various non-financial activities and professions (external accountants, auditors, estate agents, dealers in precious metals, money transport undertakings and casino operators, owners and managers). They also apply in particular to notaries and other independent legal professionals in the case of certain activities in which the risk of money laundering is particularly pronounced. However, these professions need not necessarily notify the appropriate authorities: they may also forward the required information to the bar association or an equivalent professional body.

3. The Commission and the national authorities are to cooperate in the case of illegal activities affecting the Community's financial interests.

In addition, a more accurate definition of credit and financial institutions is given, and a code of conduct is established for non-face-to-face operations, i.e. operations in which there is no direct contact with the customer.

2. Assessment of the Commission proposal

First of all, the Commission proposal is to be welcomed. The Council, Commission and Parliament agree that the scope of the directive needs to be expanded. In the assessment of the Commission proposal, therefore, no questions of principle arise as regards the objectives of and need for the amendments made. All that needs to be assessed is whether the Commission proposal meets the requirements identified or needs various additions and whether the provisions are practicable as they stand or the objectives can be better achieved by other means.

To assess whether the Commission's amendments are appropriate, it should first be pointed out the directive is but one component of an overall scheme needed to combat money laundering. It

can and should therefore meet only requirements that cannot be satisfied more appropriately by other measures.

2.1 The extension of the list of predicate offences

It is right in principle that the list of predicate offences should be extended to include 'organised crime' in general, but it should be left at that. Your rapporteur also takes the view that 'organised crime' as a predicate offence is a more practicable basis than the category of 'serious offence' with certain minimum penalties chosen in the Joint Action on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime[6].

A question to which a clear and uniform answer has not always been given at international and EU level in the past is, however, what is meant by the term 'organised crime'. A definition is not to be found in the Commission proposal, and one should at least be attempted.

2.2 The arrangements for professions outside the financial sector proper

The Commission proposal imposes on the professions now included in the scope of the directive, with the exception of 'notaries and other independent legal professionals', the same obligations as credit and financial institutions. There can be no objection to this approach, since these individuals can be misused for money laundering in exactly the same way as such institutions. However, the daily round for these professional groups differs significantly from that of credit and financial institutions, which means that the application of the same provisions is not always practicable. It seems excessive, for example, and unnecessary for the purposes of this directive to require of estate agents that they identify their customers at the time of entering into business relations with them. A business relationship may be established in this case through the dispatch of information on a property in response to a request by telephone. Nor can the information requirements imposed on credit and financial institutions, which are usually of a certain size, be applied to members of the liberal professions, who often have a small staff. Appropriate adjustments should thus be made here.

The special arrangements proposed by the Commission for 'notaries and other independent legal professionals' are similarly appropriate in principle. It must be first be made clear, however, that all independent legal and tax consultants are meant. In its resolution on the second Commission report (see above) Parliament also called for the obligations of secrecy by which these professions are bound to be fully maintained. As this has not been adequately achieved by the Commission in every respect, adjustments need to be made.

2.3 The arrangements for non-face-to-face operations

The new ways of effecting payment transactions, such as direct banking and pre-paid cards, also provide new opportunities for laundering money. In such transactions direct contact between the customer and institution is no longer necessary, since they can be effected by computer, telephone and fax. To prevent abuse by money launderers as far as possible, fundamental requirements concerning the identification of customers must be imposed.

[6] OJ L 333, 9.12.1998, p. 1

The Commission proposal, however, is confined to rules for credit and financial institutions, which are set out in an annex. Yet non-face-to-face transactions may also occur in the case of the professions now included in the scope of the directive. A lawyer, for example, may receive a brief by fax without knowing the client personally. Where practicable, provisions concerning the identification of customers in non-face-to-face operations should also apply to such persons.

2.4 The European Communities' financial interests

Fraud, corruption and other illegal activities that might have an adverse effect on the European Communities' financial interests should, in the Commission's opinion, be included in the list of offences committed prior to money laundering (predicate offences). This is, moreover, the only area in which the Commission provides for cooperation between itself and the authorities responsible for combating money laundering. Unfortunately, in neither the proposal for a directive nor the explanatory memorandum does the Commission furnish an explanation for the general inclusion of illegal activities affecting the European Communities' financial interests.

In the explanatory memorandum it refers instead to the fact that measures to combat money laundering have hitherto largely depended on the willingness and efforts of the financial sector and that this also applies to the activities and professions now included in the scope of the directive. This has led it to believe that a reporting obligation based on serious offences is too broad, and that willingness to cooperate is ensured if the aim is to combat organised crime.

All these arguments are sound, but they lead to the conclusion that fraud and corruption affecting the European Union budget should be covered only in serious cases, as defined in Article 1(e) of the Second Protocol of 19 June 1997 to the Convention on the protection of the financial interests of the European Union[7].

3. An efficient system for combating money laundering in the European Union

As mentioned above, the money laundering directive is but one component of an overall European system yet to be created with the goal of effectively preventing and combating money laundering. A system of this kind must not only ensure the protection of the financial system but also provide effective opportunities for collecting and confiscating the proceeds of crimes, facilitate the prosecution of money launderers across national frontiers, with Europol involved, and, through international cooperation, make it more difficult for money launderers to evade justice.

With the Joint Action on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime[8] initial, though as yet inadequate, efforts have been made to improve the situation as regards confiscation.

Another area directly associated with this directive is *cooperation and the exchange of information among the Member State authorities responsible for combating money laundering*.

[7] OJ C 221, 19.7.1997, p. 12
[8] OJ L 333, 9.12.1998, p. 1

The Council is now working on a decision concerning cooperation and the exchange of information among the Member States' anti-money laundering agencies.

Parliament also expects the Council to step up its efforts to combat money laundering, taking full advantage of the opportunities offered by the Treaty of Amsterdam in all areas, and to involve the European Parliament fully in this process.

1 February 2000

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on

on the proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 – C5-0065/1999 – 1999/0152(COD)) (report by Mr Lehne – 'Hughes' procedure)

Draftsman: Diemut R. Theato

PROCEDURE

At its meeting of 13 October 1999 the Committee on Budgetary Control appointed Diemut Theato draftsman.

It considered the draft opinion at its meetings of 6 and 7 December 1999 and 25 and 26 January 2000.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: Diemut R. Theato, chairman and draftsman; Herbert Bösch and Freddy Blak, vice-chairmen; Mogens Camre, Paulo Casaca, Gianfranco Dell'Alba, Christos Folias (for Mr Raffaele Costa), Thierry B. Jean-Pierre, Bashir Khanbai, Helmut Kuhne, Brigitte Langenhagen, John Joseph McCartin (for Mr José Javier Pomés-Ruiz), Eluned Morgan, Jan Mulder (for Mr Antonio Di Pietro), Bart Staes, Gabriele Stauner, Giovanni Pittella (for Mr Michiel van Hulten) and Heide Rühle (for Mr Claude Turmes).

GENERAL COMMENTS

As the Commission rightly states: 'The 1991 anti-money laundering Directive was a landmark in the fight against criminal money and its potentially highly damaging effect on the financial system'[9]. Parliament played an active role in drawing up the Directive[10], cooperating in 1990[11]

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9 Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999)352 – C5-0065/1999 – 1999/0152(COD)), p. 3, fifth paragraph

10 Directive 91/308/EEC

11 OJ C 324, 24.12.1990, p. 197

and 1991[12]. It was apparent even then that the professions which come into contract with money laundering may not necessarily fall within the strictly defined financial sector[13].

However, the first step was necessarily confined to the financial sector; firstly, because it was at risk of destabilisation and, secondly, on the grounds that it was the most obvious target for the laundering of money obtained from criminal activities.

It is now possible to go one step, or perhaps several steps, further. First of all, by way of clarification, a distinction needs to be made between reporting suspected acts of laundering, a ban on (aiding and abetting) laundering and making laundering, or forms of aiding and abetting laundering, of money derived from criminal sources a criminal offence. These three aspects were covered in the 1991 directive.

The objectives of the proposed modification of the directive are clear:

a. extending the ban on laundering the proceeds of drug trafficking to include the proceeds of all forms of organised crime;

b. extending the obligations set out in the directive to include certain non-financial activities and professions;

c. cooperation between the national authorities and the Commission in the case of illegal activities affecting the financial interests of the European Communities.

The last point is of particular importance to the Committee on Budgetary Control.

Procedure

The draftsman is of the opinion that in view of the different objectives of the proposal and the fact that these objectives are clearly distinct, falling within the scope of different committees, there is a need for closer cooperation between Parliament's committees ('Hughes' procedure).

General context

The 1991 directive on money laundering was concerned principally with laying down rules applicable to the financial sector. However, the limits were already fairly flexible in that Article 12 encouraged the Member States to extend the provisions to professions and undertakings other than financial institutions. The directive was concerned not only with laying down rules for banks but also with making money laundering a criminal offence.

In addition to extending the scope of the directive to include professions, this approach needs also to apply to the description of the illegal activities concerned. Legislation on protection of the financial interests of the Communities and the creation of OLAF are important recent moves

[12] OJ C 129, 20.05.1991, p. 66
[13] Cf. Article 12, which provided an opening for legislation in other areas

towards combating crime, but they are also autonomous means of protecting the finances of the Community. The unity of Community law needs to be guaranteed in the sense that we should not forget to include protection of the financial interests of the Community in the next piece of legislation. The argument that the issue is always organised crime is not correct. Some instances of major fraud and corruption are not examples of organised crime.

Although we cannot reach a final decision, a maximum sum could be introduced as the cut-off point for reporting to the services of the Commission suspected laundering of Community funds. The problem here, however, is that the sums already mentioned in the directive relate in theory to monitoring but not to suspicion. We could take the line that this is also applicable to the financial interests of the Community, so that in principle matters of negligible importance do not clog up the system.

Clarification of the Commission proposal

We feel that the Commission proposal needs clarification in two respects. The first point concerns the clear mandate in Article 280 of the Treaty which is barely reflected in the Commission proposal. The second point concerns the initiatives for cooperation which, given the terms of reference of OLAF and the wording of Article 280, could also be taken by the services of the Commission. The situation could be improved by establishing a European public prosecutor's office. Parliament has already called for this, Commissioner Vitorino has expressed a favourable opinion, the Committee of Wise Men and the Court of Auditors are in favour and, moreover, the Commissioner responsible, Mr Barnier, put this point on the agenda for revision of the Treaties.

Report of the committee responsible

The draft report of the committee responsible was written with considerable expertise and it can be supported almost in its entirety, with the exception of the point concerning doing away with protection of the financial interests of the Community. Given the importance of this, and the importance of the link between money laundering in this area and other forms of money laundering, we cannot accept this approach.

CONCLUSIONS

The Committee on Budgetary Control calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission	Amendments by Parliament
	(Amendment 1) Recital 15a(new)
	(15a) Whereas fraud, corruption and other illegal activities having a detrimental effect

	on public budgets, including the financial interests of the European Communities, should also be included in the reporting of suspicious transactions, the prohibition on money laundering and the definitions of criminal offences;

Justification

The Directive's prohibition on money laundering should expressly include activities to the detriment of the financial interests of the Community. The current Directive contains three elements: reporting suspicion, prohibiting money laundering and establishing a criminal offence. Explicit mention is needed of protection of the financial interests of the Community. Paragraphs 51 – 58 of the Tampere conclusions support inclusion of protection of the financial interests.

(Amendment 2)
Recital 16

(16) ***Whereas, in the case of such fraud, corruption and other illegal activities, the Member States authorities responsible for combating money laundering and the Commission should cooperate with each other and exchange relevant information;***	(16) ***Whereas, in implementing the abovementioned measures, the responsible Member States authorities and the Commission shall cooperate, as provided for in Article 280 of the Treaty; whereas the services of the Commission may take the necessary initiatives;***

Justification

Article 280 of the EC Treaty clearly mandates the services of the Commission and of the Member States to protect the financial interests of the Community and to work together to this end. We conclude from this that the services of the Commission may also take initiatives.

(Amendment 3)
ARTICLE 1 (E)
Article 1 (Directive 91/308/EEC)

(E) 'Criminal activity' means	(E) 'Criminal activity' means
– a crime specified in Article 3(1) of theVienna Convention[1],	– a crime specified in Article 3(1) of the Vienna Convention[1],
– participation in activities linked to organised crime,	– participation in activities linked to organised crime,
– fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests	– fraud, corruption or any other illegal activity damaging or likely to damage ***public budgets, including*** the European

and	Communities' financial interests, and
– any other criminal activity designated as such for the purposes of this Directive by each Member State.	– any other criminal activity designated as such for the purposes of this Directive by each Member State.
[1] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19 December 1988 in Vienna	[1] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19 December 1988 in Vienna

Justification

Fraud, corruption or other illegal activities damaging or likely to damage the financial interests of the European Communities should be regarded as significant criminal offences.

(Amendment 4)
ARTICLE 1, POINT 11
Article 12(2)

2. In case of fraud, corruption or any illegal activity damaging or likely to damage the European Communities' financial interests, the anti-money laundering authorities referred to under article 6 and, within its competences, the Commission, shall collaborate with each other for the purpose of preventing and detecting money laundering. To this end they shall exchange relevant information on suspicious transactions. Information thus exchanged shall be covered by rules of professional secrecy.	2. In case of fraud, corruption or any illegal activity damaging or likely to damage the European Communities' financial interests, the anti-money laundering authorities referred to under article 6 and, within its competences, the Commission, shall collaborate with each other for the purpose of preventing and detecting money laundering. To this end they shall exchange relevant information on suspicious transactions. Information thus exchanged shall be covered by rules of professional secrecy. ***The services of the Commission may take all necessary initiatives in this respect.***

Justification

It is sensible to point out that the services of the Commission may take the initiative.

(Amendment 5)
ARTICLE 1, POINT 11
Article 12(2a) (new)

	2a. OLAF or, where applicable and if established, the offices of a European public

established, the office of a European public prosecutor shall be able to pursue its activities within the scope of this Directive without any restrictions.

Justification

OLAF already has investigative powers. If the financial interests of the European Communities were at stake, these powers should not be limited.

22 March 2000

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1999 on prevention of the use of the financial system for the purpose of money laundering
(COM(1999) 352 – C5-0065/1999 – 1999/0152 COD) (report by Klaus-Heiner Lehne)

Draftsman: Mr Mihail Papayannakis

PROCEDURE

At its meeting of 22 September 1999 the Committee on Economic and Monetary Affairs appointed Mr Mihail Papayannakis draftsman.

It considered the draft opinion at its meetings of 6 December 1999, 22 February 2000 and 22 March 2000.

At the latter meeting it adopted the following conclusions by 28 votes with 1 abstention.

The following were present for the vote : Christa Randzio-Plath, chairman ; José Manuel García-Margallo y Marfil, vice-chairman ; Mihail Papayannakis, rapporteur ; Hans Blokland, Jonathan Evans, Ingo Friedrich, Carles-Alfred Gasòliba i Böhm, Roger Helmer (for Charles Tannock), Christopher Huhne, Pierre Jonckheer, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Gorka Knörr Borràs, Christoph Werner Konrad, Wilfried Kuckelkorn (for Robert Goebbels), Jules Maaten, Thomas Mann, Ioannis Marinos, Juan Andreas Naranjo Escobar (for José Javier Pomés Ruiz), Fernando Pérez Royo, Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Marianne L.P. Thyssen, Bruno Trentin, Ieke van den Burg, Theresa Villiers.

SHORT JUSTIFICATION

The Commission's proposal amending Directive 91/308/EEC on money laundering[14] is the first substantial revision of the directive. The main objective of the original directive remains the same and is not subject to revision. Accordingly, combating the legitimisation of proceeds from criminal activity remains the sole objective, though the means proposed may not be effective for

[14] OJ L 166, 26.6.1991, p. 77.

two reasons. The first reason relates to the framework within which the amended directive will have to be implemented, that is within the European Union alone, without due consideration being given to the international dimension of organised crime. The second reason concerns the dimensions of modern organised crime and the means which it uses.

Under Article 17 of the original directive, the Commission drew up two reports on which Parliament drew up another two reports[15]. The main concern of the Committee on Economic and Monetary Affairs in its opinions was to stress the two main aspects of money laundering. The first concerned (and continues to be so) the stability of the markets and, in particular, of the financial markets, which affected (and continues to affect) monetary policy. The reason for highlighting this aspect was that the flow of capital from illegal activities and the manner in which these movements become a component part of the international financial system and affect all areas of monetary policy – money supply, speed of circulation, form of investment, stability, etc. – compromise the effectiveness of the supervisory authorities and strengthens the parallel economy. The second aspect concerned (and continues to do so) the scope of the directive, which only covered drug trafficking, while leaving a very broad range of illegal activities outside its field of application.

The proposal under review broadens the scope of the directive in an attempt to cover additional activities related to organised crime, which is not defined, however.[16] Moreover, a considerable number of articles in the proposed directive are unclear and are poorly expressed. Your draftsman proposes a number of amendments aimed at broadening the scope of the term 'credit institution' to include electronic money, extending the requirements of the directive to activities and professions which the proposal for a directive does not cover, and clarifying certain aspects of the original directive.

1. Explanation of certain amendments

The amendment referring to Article 1, point (A) supplements the Commission's text, which is the same Article 1 of the original Council Directive 91/308/EEC, by referring to the more recent Commission proposal for an EP and Council directive on electronic money. The original directive stated that it is only possible to combat money laundering if the credit and financial systems cooperate with the supervisory authorities of the Member States within the EC, the regulatory framework for which is established by three directives : 98/31/EC[17], 98/32/EC[18] and 98/33/EC[19]. The term 'credit institution', however, is defined in Directive 77/780/EEC[20].

[15] See COM(95)54 final, the Lehne report (A4-0187/96) and the EP's resolution in OJ C 198, 8.7.96, p. 245, and COM(1998)401 final, the Newman report (A4-0093/99) and the EP's resolution of 9.3.1999 in the plenary minutes PE 277.742.

[16] The directive could have referred for example to activities such as trafficking in arms and nuclear materials, theft of works of art, credit card fraud, trafficking in illegal immigrants, smuggling, the white slave trade, blackmail, theft of and trafficking in cars etc.

[17] OJ L 204, 21.7.98, p. 13

[18] OJ L 204, 21.7.98, p. 26

[19] OJ L 204, 21.7.98, p. 29

[20] OJ L 320, 17.12.77, p. 30

What are the requirements of Directive 91/308/EEC in regard to money laundering ? 'Credit institutions' and 'financial institutions' are required to provide full information on their customers, to keep appropriate records, and to develop programmes for combating the legitimisation of the proceeds of illegal activities. In addition, they are required to inform the supervisory authorities of any suspicious transaction. Under the above three directives and Directive 91/308/EEC, banking secrecy may be lifted whenever the supervisory authorities deem it necessary.

The said amendment simply expands the definition of 'credit institution' to include the recent proposal (common position, moreover) on electronic money. For what reasons ? Firstly, this directive provides a definition of 'electronic money institutions'. Secondly, it lays down the legal framework governing the establishment and operation of 'bodies' issuing electronic money. Electronic money institutions are not, however, part of credit institution and therefore do not fall under the current three banking directives referred to above. Amendment 1 expands the definition of credit institutions to include electronic money institutions.

The amendment to Article 1, para (B), sub-para (3) makes no changes to the financial institutions defined by Directive 89/646/EEC[21], bureaux de change and money transmission services, and insurance companies as proposed by the directive under review. However, it adds the 'management companies' provided for in Directive 85/611/EEC[22] on undertakings for collective investments in transferable securities (UCITS) to 'investment firms'. This is because the two recent Commission proposals amending Directive 85/611/EEC effectively transform 'UCITS management companies' into another 'investment firm'.

However, the amendment to Article 1, paragraph (B) also expands the definition of financial institution by adding supervisory authorities for stock exchange, foreign exchange and derivatives.

Article 2a of the proposal for a directive is completely new. It extends the range of business activities subject to the obligations of the original directive. The number of accountable legal and natural persons covered is considerable but they are those proposed by Parliament in its resolution of 9 March 1999. Accordingly :

The amendment to Article 2a, sub-paragraph (3) simply adds 'tax counsellors' to accountants and auditors because of the related nature of their work .

The amendment to Article 2a, sub-paragraph (6) also adds 'houses organising public tender or sales of high value art' in the event of dealing in precious stones or metals.

The amendment to Article 2a, sub-paragraph (8) establishes a balance. 'Gaming' (or Betting) is added to casinos.

The amendment to Article 2a, new sub-paragraph (8a) is essential because 'offshore activities' will be incorporated into the provisions of Directive 91/308/EEC on money laundering. This is an important matter and the EU should make a particular effort, possibly including

[21] OJ L 386, 30.12.89
[22] OJ L 375, 31.12.85

compensation, to persuade countries which allow the establishment of offshore activities to set up a proper regulatory and supervisory system or to have one imposed.

The two amendments to Article 3 (2) and Article 3a (new) should be seen as one and seek to transform the Annex (as proposed by the commission) into a proper Article.

CONCLUSIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report :

Text proposed by the Commission	Amendments by Parliament
(Amendment 1) Recital 10a (new)	
	(10a) Whereas it would be desirable for all Member States to establish regulatory authorities with specific responsibility for overseeing the activities of currency exchange offices (« bureaux de change ») and money transmitters (« money remittance offices ») in order to ensure the proper enforcement of this Directive.
Justification :	
Such organisations are insufficiently regulated at present. The Directive can only be enforced properly if these organisations are subject to proper oversight.	
(Amendment 2) Recital 23	
Whereas notaries and independent legal professionals should be made subject to the provisions of the Directive when performing a limited number of specific financial or corporate transactions where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of drugs	Whereas notaries and independent ***legal and tax consultancy*** professionals should be made subject to the provisions of the Directive when performing a limited number of specific financial or corporate transactions where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering

trafficking or organised crime;	the proceeds of drugs trafficking or organised crime ;

Justification :

In the interests of equal treatment, this provision should not apply only to notaries and other independent legal professionals ; instead, all independent legal and tax consultancy professionals should fall within the scope of the Directive.

(Amendment 3)
Recital 24

Whereas, however, where an independent lawyer or ***law firm*** is representing a client in formal legal proceedings it would not be appropriate under the directive to put the lawyer under an obligation to report suspicions of money laundering ;	Whereas, however, where an independent lawyer or ***tax consultant*** is representing a client in formal legal proceedings it would not be appropriate under the directive to put the lawyer under an obligation to report suspicions of money laundering ;

Justification

Logically, the exemption from the reporting obligation provided for in Recital 24 should apply to all independent legal or tax consultancy professions.

(Amendment 4)
Article 1(A)

(A) 'Credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community,	(A) 'Credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community, ***as last amended by Article 1 of Directive …/…/EC on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.***

Justification :

Because 'credit institutions' as defined by Directive 77/780/EEC would be amended by two Commission proposals, the one 'electronic money institutions' (COM (1998)0461 – C4-0531/1998), the other amending Directive 77/780/EE in order to include the 'electronic money institutions' (COM(1998) 0461 – C4-0532/1998 and because the EP resolution of 9 March 1999 on the 2nd Commission report on the implementation of the money laundering directive requested the Commission and the ECB to submit proposals that would 'minimise the risks of money laundering in the context of electronic money' (para. 15).

(Amendment 5)
Article 1(B)(3)

(3) an investment firm as defined in Article 1 of Directive 93/22/EEC;	(3) an investment firm as defined in Article 1 of Directive 93/22/EEC, ***and a management company as defined by Article 1 (3) of Directive 85/611/EEC on UCITS as last amended by Article 1a of Directive …/…/EC.***

Justification :

Because the Commission proposals(COM(1998) 449 and COM(1998) 451) seek to amend the UCITS directive 85/611/EEC in such a way that the management company in its enlarged role and functions would be responsible for the activities of undertakings the object of which is the collective investment in transferable securities and in money market instruments; such activities would be similar in nature but not in objective to the investment firm. Hence management companies should be legally and factually covered by the scope of the money laundering directive.

(Amendment 6)
Article 1(B)(3a) (new)

	(3a) supervisory authorities empowered by law or regulation to supervise the stock exchange, foreign exchange and financial derivatives markets.

Justification :

Because the scope of this directive should cover under the financial institutions a fourth category which would include supervisory authorities responsible for financial services and markets. The inclusion is particularly important because of competition-related aspects that may arise if some actors and actives in the financial sector are not covered, creating thus unfair competition.

(Amendment 7)
Article 1(E), third indent

- fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests and	***Delete***

Justification :

Fraud is committed for financial reasons, and relates mainly to subsidies and tax. Sometimes too much is received, sometimes too little paid. The decision of the competent body may either be wrong or based on false information, but the recipient has nothing to hide as far as the origin of the money is concerned. Laundering is the act of making black money white, but in this case there has been no question of this. The money has always been in the legal circuit.

(Amendment 8)
ARTICLE 1 (2)
Article 2a(3)

(3) external accountants and auditors	(3) external accountants, ***tax counsellors*** and auditors

Justification :

Because the three professional activities are complementary and exclusions of one may create unfavourable effects on others and thus create unfair competition.

(Amendment 9)
Article 2a(5)

(5)notaries and other independent legal professionals when assisting or representing clients in respect of the: (a) buying and selling of real property or business entities (b) handling of client money, securities or other assets (c) opening or managing bank, savings or securities accounts (d) creation, operation or management of companies, trusts or similar structures (e) execution of any other financial	(5) notaries, ***professional trustees, professional fiduciaries, company formation agents*** and other independent legal professionals when assisting or representing clients in respect of the: (a) buying and selling of real property or business entities (b) handling of client money, securities or other assets (c) opening or managing bank, savings or securities accounts (d) creation, operation or management of

transactions	companies, trusts or similar structures (e) execution of any other financial transactions

Justification :

The market for professional and financial services is more sophisticated than is reflected by the Commission's text. Similar services are provided by a number of different professionals. Those added by this amendment (professional trustees, fiduciaries and company formation agents) frequently handle money for clients. There is just as much risk that their professional activities will bring them into contact with money laundering as there is in the case of notaries and lawyers.

(Amendment 10)
ARTICLE 1 (2)
Article 2a(6)

(6) dealers in high-value goods, such as precious stones or metals	(6) dealers in high-value goods, such as precious stones or metals ***or art, and auction houses organising public tender or sales of high-value art***

Justification :

Because dealers in high-value goods and auction houses are engaged in similar activities and exclusion of one may create unfair treatment and unfair competition.

(Amendment 11)
ARTICLE 1 (2)
Article 2a (8)

(8) the operators, owners and managers of casinos	(8) the operators, owners and managers of casinos ***and of gaming***

Justification :

Because gaming has become a very sophisticated activity entailing most features of casinos except the legal aspects which are different.

(Amendment 12)
ARTICLE 1 (2)
Article 2a(8a) (new)

	(8a) offshore shell corporations or offshore centres in third countries that have concluded Europe agreement or commercial agreements with the European Community or are independent or associated territories.

Justification :

Because they are used as the intermediate stage where accounts are opened in company names that are in fact letter-boxes and for using these deposits as collateral or as money transfers which are later invested in the financial sector. These offshore activities are mainly ***tax havens*** *because of bank and commercial secrecy or without adequate supervision or offer ease of incorporation of business where ownership can be held through nominees or bearer shares.*

(Amendment 13)
Article 3(2)

(2) The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached. Where an institution establishes business relations or enters into a transaction with a customer who has not been physically present for identification purposes ('non-face to face operations') the principles and procedures laid down ***in the Annex*** shall apply	(2) The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached. Where an institution establishes business relations or enters into a transaction with a customer who has not been physically present for identification purposes ('non-face to face operations') the principles and procedures laid down ***in Article 3a*** shall apply

Justification :

See justification concerning Amendment 15 concerning Article 3a.

(Amendment 14)
Article 3(3)

(3) By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed Euro 1 000 or where a single premium is paid amounting to Euro 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the Euro 1 000 threshold, identification shall be required.	(3) By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed Euro 1 000 or where a single premium is paid amounting to Euro 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the Euro 1 000 threshold, identification shall be required. ***In the case of life insurance there shall be an identification requirement where the premium or premiums for one year amount(s) to Euro 15 000 or more.***

Justification :

Premiums for life insurance are far higher than those for other types of insurance, without there being any suspicion of money laundering. The amount above which identification is required should therefore be Euro 15 000.

(Amendment 15)
Article 3a (new)
ANNEX, title and first sub-paragraph

ANNEX IDENTIFICATION OF CUSTOMERS (PHYSICAL PERSONS) BY CREDIT AND FINANCIAL INSTITUTIONS IN NON FACE-TO-FACE FINANCIAL OPERATIONS ***Within the framework of the Directive,*** the following principles ***should*** apply to the identification procedures for non face-to-face financial operations:	The following principles ***shall*** apply to the identification procedures for non face-to-face financial operations: ***Sub-paragraphs (i) to (vii) of ANNEX***

unchanged

Justification :

Both the identification of customers and the identification procedures should be included in an Article of this Directive, not in Annex to it. This has been the practice for all Directives in this and similar fields and should apply to this Directive as well. The essence of the Annex is retained intact.

(Amendment 16)
Article 6(2)

The information referred to in paragraph 1 shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the ***institution or person forwarding the information is situated***. The person or persons designated by the institutions and persons in accordance with the procedures provided for in Article 11 (1) shall normally forward the information	The information referred to in paragraph 1 shall be forwarded to the authorities responsible for combating money laundering of the member state in whose territory the ***transaction giving rise to the obligation to report occurred.*** The person or persons designated by the institutions and persons in accordance with the procedures provided for in Article 11(1) shall normally forward the information.

Justification:

The Commission's text requires the report to go to the authorities of the Member State where the reporting institution or person is located. As presently drafted, the Commission text gives rise to problems where the relevant institution has branches in more than one country. Such institutions are located in a number of countries. They could choose to which country's authorities to report. The amendment provides a simpler and clearer approach – that the report must go to the authorities of the Member State where the suspicious transaction occurred. The amendment also ensures that institutions cannot shop around the authorities of the different jurisdictions in which their branches happen to operate.

(Amendment 17)
Article 12(3)

3. When independent legal professions are concerned, Member States may exempt bar associations and self-regulatory professional bodies from obligations under paragraph 2.	***Delete***

Justification :

The exemption proposed by the proposal seems to be inconsistent with the proposed Article 2a (5).

21 March 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a European Parliament and Council directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (COM(1999) 352 - C5-0065/1999 - 1999/0152(COD)) (report by Klaus-Heiner Lehne)

Draftsperson: Diana Wallis

PROCEDURE

At its meeting of 23 November 1999 the Committee on Legal Affairs and the Internal Market appointed Diana Wallis draftsperson.

It considered the draft opinion at its meetings of 1 February 2000, 21 February 2000, 20 March 2000 and 21 Mars 2000.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, vice-chairman; Diana Paulette Wallis, draftsman; Carlos Candal, Jean-Maurice Dehousse, Janelly Fourtou, Marie-Françoise Garaud, Françoise D. Grossetête, Gerhard Hager, Malcolm Harbour, The Lord Inglewood, Ioannis Koukiadis, Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Véronique Mathieu, Arlene McCarthy, Manuel Medina Ortega, Bill Miller and Joachim Wuermeling.

1. Gist of the proposal

The proposal aims at extending the scope of the Directive to cover the following institutions and professions:

- investment firms
- external accountants and auditors
- real estate agents
- dealers in high-value goods, such as precious stones or metals
- transporters of funds

- the operators, owners and managers of casinos
- notaries and other independent legal professions when *assisting* or *representing* clients *in respect of certain activities*.

This corresponds to a wish expressed by Parliament in its Resolution on the Second Commission Report on the implementation of the Money Laundering Directive[23].

The new Article 6 contains specific co-operation requirements for ***independent legal professions***. These professions will have to co-operate with *their bar-association* or an appropriate self-regulatory body which will in turn be obliged to co-operate with the authorities responsible for combating money laundering. Furthermore, Member States shall not be obliged to apply the co-operation obligations to such legal professionals *with regard to information they receive from a client in order to be able to* ***represent*** *him in legal proceedings*. This derogation would not of course extend to any case in which there are grounds for suspecting that advice is being sought for the purpose of facilitating money laundering.

A new annex to the Directive lays down principles for the identification of customers *by credit and financial institutions* in ***non face-to-face financial operations***. This goes some way towards satisfying the concerns expressed by the EP. In any event, the Commission has undertaken to keep the question under review.

2. General comments

a) Legal base

The proposal is based on Articles 47(2) and Article 95 of the EC Treaty.

The purpose of Article 47 is "to *make it easier* for persons to take up and *pursue* activities as self-employed persons" (Art. 47(1)).

According to Article 47(2), the Council shall issue directives for the co-ordination of the provisions laid down by law, regulation or administrative action in Member States concerning the "taking-up and *pursuit* of activities as self-employed persons".

Directive 91/308/EEC is very much on the borderline of Community competence in so far as it *defines* 'money laundering'. The directive does not explicitly oblige Member States to criminalise money laundering as defined, but certain obligations arising from the directive would be to no purpose if money laundering were not a criminal offence in all Member States.

Article 31(e) of the EU Treaty provides that common action on judicial co-operation in criminal matters is to include the progressive adoption of measures establishing *minimum rules* relating to the *constituent elements* of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking. Articles 47 and 95 of the EC Treaty cannot possibly cover this same subject matter.

Whereas the new Article 1(e) merely defines money laundering for the purposes of the directive and does not purport to render the conduct described therein a criminal offence, the definition is so detailed, including full particulars of what would be the *actus reus* and the requisite *mens rea* of the crime, that Member States may have to amend provisions of their criminal law if they

[23] OJ C 175, 21.6.1999, p. 39.

have not acted on the international conventions on which the definition is based. It could therefore possibly be argued that a directive should not have been adopted under the EC Treaty but some other instrument based on Article 31(e) of the EU Treaty. It is noted that a legal basis problem also existed in connection with the original directive. Your rapporteur considers that she should at least advert to this unorthodox approach.

b) Proportionality

Contrary to the clear wording of Article 47(1), the proposed directive would not "*make it easier* for persons to take up and pursue activities as self-employed persons". The proposed changes are liable to involve a considerable bureaucratic burden on small and medium-sized businesses (jewellers, for instance), depending on how the Member States interpret the requirements of Article 6(1)(b) in particular. It might be desirable to impose a ceiling in terms of turnover in respect of some such requirements.

The changes will also impose a very considerable burden on lawyers' professional bodies in terms of the preparation of guidelines, organisation of vocational training courses, changes to legal practice curricula and, above all, the provision of advice. It is not certain whether all lawyers' professional bodies have the capacity to cope with this, especially in view of the delicate questions of client confidentiality and privilege raised. Practitioners in situations in which they risk breaching professional ethics, committing a criminal offence and becoming a constructive trustee will not be backward in telephoning the section of their professional association which deals with professional ethics and money laundering.

Moreover, traders will have to turn to lawyers for advice, which will involve them in additional costs.

Secondly, the references to "activities damaging or likely to damage the European Communities' financial interests" are too vague and arguably too broad for inclusion in this directive

Lastly, I am somewhat concerned by Article 6(4), which provides that information supplied to the authorities about possible money laundering may also be used for other purposes.

c) Distinction of the laundering of the proceeds of drug crime from the laundering of the proceeds of other crime?

Given the difficulty in distinguishing money laundering according to the nature of the underlying crime (predicate offence) and leaving aside the fact that it is very hard for practitioners to tell whether a certain transaction clients might be asking for is linked to money laundering *at all*, the extension of the directive to cover not only drug trafficking but all organised crime is to be welcomed in so far as it simplifies the application of the Directive.

3. Comments relating to legal practitioners and other professionals

As I have already mentioned, the interplay of the duty to report possible money laundering with professional ethics, including client confidentiality and privilege, will raise complex problems and dilemmas for practitioners. On the one hand, they risk criminal prosecution, on the other, disciplinary proceedings. In both cases, they risk being debarred from practising.

Lawyers are used to dealing with such problems in their professional lives, but this should not cause us to underestimate the difficulty of the issues involved or the burdens and costs which this problem will impose on practitioners and their professional bodies.

There is abundant case-law of the European Court of Human Rights and of the Court of Justice dealing with fundamental rights, such as confidentiality of written communications and telephone conversations between client and lawyer. There is also a substantial corpus of national case-law and rules on these matters and professional privilege. The requirements of the directive will undoubtedly also give rise to much work for lawyers and the courts in defending their clients and establishing the extent of their own rights and duties. It is trusted that the national supreme courts, the European Court of Human Rights and the Court of Justice will be diligent in ensuring that fundamental rights are complied with and not overridden by the requirements of the directive.

It is noted that lawyers are exempted from certain obligations under the directive where they receive information from a client in order to be able to represent him or her in legal proceedings (Article 6(3), second subparagraph). This is reasonable but rather too narrow in that the exemption should, in my view, also extend to the provision of advice and other legal services, provided that it is not sought or that they are not provided for the purpose of money laundering.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission	Amendments by Parliament
	(Amendment 1) (Recital 15)
(15) Whereas the Directive imposes obligations regarding in particular the reporting of suspicious transactions; whereas it would be more appropriate and in line with the philosophy of the Action Plan to Combat Organised Crime for the prohibition of money laundering under the Directive to be extended to cover not only drugs offences but all organised crime activities***, as well as fraud, corruption and any other illegal activities affecting the financial interests of the Communities, as referred to in Article 280 of the Treaty;***	(15) Whereas the Directive imposes obligations regarding in particular the reporting of suspicious transactions; whereas it would be more appropriate and in line with the philosophy of the Action Plan to Combat Organised Crime for the prohibition of money laundering under the Directive to be extended to cover not only drugs offences but all organised crime activities;

(Amendment 2)
Recital 16

(16) Whereas, in the case of such fraud, corruption and other illegal activities, the Member States authorities responsible for combating money laundering and the Commission should cooperate with each other and exchange relevant information;	***Deleted***

(Amendment 3)
Recital 16a (new)

(16a) Whereas a uniform definition of organised crime does not yet exist at either international or European Union level; whereas a more precise definition of the term should nevertheless be adopted for the purposes of this Directive;

(Amendment 4)
Recital 16b (new)

(16b) Whereas the Council has stated in its Joint Position of 29 March 1999 on the proposed United Nations convention against organised crime* that the provisions of the convention should encompass the activities of persons, acting in concert with a view to committing serious crime, involved in any criminal organisation which has a structure and is, or has been, established for a certain period of time; whereas the directive can also be based on this definition;

* OJ L 87, 31.3.1999, p. 1.

(Amendment 5)
Recital 22a (new)

(22a) Whereas the provisions relating to

	credit and financial institutions cannot be adopted unchanged in this context;

(Amendment 6)
Article 1(a)

For the purpose of this Directive (A) 'Credit institution' means a credit institution, as defined in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community,	For the purpose of this Directive (A) 'Credit institution' means: ***(1)*** a credit institution, as defined in the first indent of Article 1 of Directive 77/780/EEC and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices inside or outside the Community, ***(2) an undertaking that issues prepaid cards for payment purposes or creates and manages units of payment in computer networks.***

(Amendment 7)
Article 1(E), second indent

– participation in activities linked to organised crime,	– participation in activities linked to organised crime, ***meaning the activities of persons, acting in concert with a view to committing serious crime, involved in any criminal organisation which has a structure and is, or has been, established for a certain period of time,***

(Amendment 8)
Article 1(E), third indent

- fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests and	***Deleted***

(Amendment 9)
Article 1(F)

‘Competent authorities’ means the national authorities ***empowered by law or regulation to supervise any of the institutions or persons subject to this Directive.***	'Competent authorities’ means the national authorities ***designated by the Member State for the institutions and persons concerned***.

(Amendment 10)
Article 2a (5)

(5) notaries and ***other independent legal*** professionals when ***assisting or*** representing clients in respect of the:	(5) notaries and ***any lawyers working as dependent professionals*** when representing clients ***or providing legal assistance*** in respect of the:

(Amendment 11)
Article 2a (6)

Does not apply to the English version but applies at least to the German version.

(Amendment 12)
Article 2a (8)

(8) the operators, owners and managers of casinos.	(8) the operators, owners and managers of casinos ***and gaming establishments***.

(Amendment 13)
Article 3(1)

(1) Member States shall ensure that the institutions ***and persons*** subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.	(1) Member States shall ensure that the institutions ***referred to in Article 2a(1) and (2)*** subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.

(Amendment 14)
Article 3(1a) (new)

(1a) The Member States shall ensure that institutions and persons covered by this Directive take appropriate measures to deal with the risk of money laundering. That risk arises when business relations are entered into with a customer at a considerable distance, where personal identification is not possible (non-face-to-face operations). Such measures may, for example, include requests for further additional documentary evidence or corresponding confirmation of identity by a reliable credit institution which is duly recognised by the Member States of the European Union.

(Amendment 15)
Article 3(2)

(2) ***The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1,*** involving a sum amounting to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.	(2) ***All the institutions and persons referred to in Article 2a shall identify their customers in any transaction undertaken with their participation and*** involving a sum amounting to Euro 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.
Where an institution establishes business relations or enters into a transaction with a customer who has not been physically present for identification purposes ('non-face-to-face operations') the principles and	***Deleted***

procedures laid down in the Annex shall apply.

(Amendment 16)
Article 3(3)

(3) By way of derogation from paragraphs ***1 and 2***, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive ***79/267/EEC***, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ***EUR 1 000*** or where a single premium is paid amounting to ***EUR 2 500*** or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the ***EUR 1 000*** threshold, identification shall be required.	(3) By way of derogation from ***the above*** paragraphs, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive ***92/96/EEC***, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ***EUR 3 000*** or where a single premium is paid amounting to ***EUR 10 000*** or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the ***EUR 3 000*** threshold, identification shall be required.

(Amendment 17)
Article 6(3)

(3) In the case of the ***independent legal professionals*** referred to in point 5 of Article 2a, Member States may designate as the authority referred to in paragraph 1 of this Article ***the bar association or*** appropriate self-regulatory body of the profession concerned and in such case shall lay down the appropriate forms of cooperation between ***them*** and the other authorities responsible for combating money laundering. ***Member States shall not be obliged to apply the obligations laid down in paragraph 1 to such legal professionals with regard to information they receive from a client in order to be able to***	(3) In the case of the ***lawyers working as dependent professionals*** referred to in point 5 of Article 2a, Member States may designate as the authority referred to in paragraph 1 of this Article the appropriate self-regulatory body of the profession concerned***, where such a body exists***, and in such case shall lay down the appropriate forms of cooperation between it and the other authorities responsible for combating money laundering.

represent him in legal proceedings. This derogation from the obligations laid down in paragraph 1 shall not cover any case in which there are grounds for suspecting that advice is being sought for the purpose of facilitating money laundering.	

(Amendment 18)
Article 6 (4)

Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering. ***However, Member States may provide that such information may also be used for other purposes***.	Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering.

(Amendment 19)
Article 8

The institutions and persons subject to 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 authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.	The institutions and persons subject to 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 authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out***, unless the person or institution concerned is required to do so by legislation relating to the profession concerned***.

(Amendment 20)
Article 9

The disclosure ***in good faith*** to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or	The disclosure to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative

administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.	provision, and shall not involve the institution or person or its directors or employees in liability of any kind ***unless the disclosure is intentional or the information disclosed is untrue owing to gross negligence***.

(Amendment 21)
Article 11

Member States shall ensure that the institutions ***and persons subject to this Directive***: ***1.*** establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, ***2.*** take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.	***1.*** Member States shall ensure that ***credit and financial*** institutions: (a) establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, (b) take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases. ***2. Member States shall ensure that the institutions and persons subject to this Directive have access to up-to-date information on the practices of money launderers and on evidence leading to the recognition of suspicious transactions.***

(Amendment 22)
Article 12(3)

3. When ***independent legal professions*** are concerned, Member States may exempt ***bar associations and*** self-regulatory professional bodies from obligations under paragraph 2.	3. When ***lawyers working as dependent professionals*** are concerned, Member States may exempt ***the relevant*** self-regulatory professional bodies from obligations under paragraph 2.

(Amendment 23)
Annex

Identification of customers (physical persons) by credit and financial institutions in non face-to-face financial operations ***Within the framework of the Directive, the following principles should apply to the identification procedures for non face-to-face financial operations:*** ***(i) The procedures should ensure appropriate identification of the customer.*** ***(ii) The procedures may apply provided there are no reasonable grounds to believe that face-to-face contact is being avoided in order to conceal the true identity of the customer and there is no suspicion of money laundering.*** ***(iii) The procedures should not apply to operations involving the use of cash.*** ***(iv) The internal control procedures stipulated in Article 11(1) of the Directive should take specific account of non-face-to-face operations.*** ***(v) When the counterpart of the institution undertaking the operation ("contracting institution") is a customer, identification may be carried out by the following procedures:*** ***a) Using the contracting institution's branch or representative office which is nearest the customer in order to carry out a face-to-face identification*** ***b) If the identification is carried out without a face-to-face contact with the customer:*** ***A copy of the customer's official identification document or the official number of the identification document should be required. Special attention should be paid to the verification of the customer's address when this is indicated on the identification document (e.g. documents concerning the operation to be sent by registered mail with advice of receipt to the customer's address).*** ***The first payment of the operation should***	***deleted***

be carried out through an account opened in the customer's name with a credit institution located in the European Union or in the European Economic Area. States may allow payments carried out through reputable credit institutions established in third countries which apply equivalent anti money laundering standards.
The contracting institution should carefully verify that the identities of the holder of the account through which the payment is made and of the customer, as indicated in the identification document (or ascertained from the identification number) are one and the same. In the case of doubt in this regard, the contracting institution should contact the credit institution with which the account is opened in order to confirm the identity of the account holder. If the doubt still remains a certificate from the credit institution should be required attesting to the identity of the account holder and confirming that the identification was properly carried out and that the particulars have been registered according to the Directive.
c) In the case of certain insurance operations, identification requirements may be waived when the payment is "to be debited from an account opened in the customer's name with a credit institution subject to this Directive" (Article 3(8)).
(vi) When the counterpart of the contracting institution is another institution acting on behalf of a customer:
a) If the counterpart is located in the European Union or in the European Economic Area, identification of the customer by the contracting institution is not required. (Art. 3(7) of the Directive).
b) If the counterpart is located outside the European Union and the European Economic Area, the institution should check the identity of its counterpart (unless it is well known), by consulting a reliable financial directory. In the case of doubt in this regard, the institution should seek confirmation of its counterpart's identity

from the third country supervisory authorities. The institution should also take "reasonable measures to obtain information" on the customer of its counterpart (beneficial owner of the operation) (Art. 3(5) of the Directive). These "reasonable measures" could go from simply requesting the name and address of the customer, when the country applies equivalent identification requirements, to requesting a counterpart's certificate stating that the customer's identity has been properly verified and registered, when in the country in question the identification requirements are not equivalent.

(vii) The above-mentioned procedures do not preclude the use of other ones which, in the opinion of the competent authorities, may provide equivalent safety for the identification in non-face-to-face financial operations.