

Money laundering: prevention of the use of the financial system, including terrorist financing (repeal. Directive 91/308/EEC)

2004/0137(COD) - 30/06/2004 - Legislative proposal

PURPOSE : Preventing the use of the financial system for the purpose of money laundering – including terrorist financing.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : This proposal builds upon, extends and ultimately repeals the 1991 Directive on prevention of the use of the financial system for the purpose of money laundering and its 2001 amendments. Directive 91/308/EEC was limiting in that it covered money laundering only in terms of drugs offences. Although the 2001 amendment to the Directive widened its scope, the precise definition of "serious offence" was left open. As with the previous Directive the core provisions of this new proposal are based on 40 Recommendations prepared by the Financial Action Task Force on Money Laundering (FATF). Since 2003 the FATF world standard has been revised in order to remain relevant to emerging trends in money laundering – notably the need to combat money laundering by terrorist organisations. When considering this proposal the Member States agreed that the concept of serious offences should cover all offences relating to the financing of terrorism. This has been reflected in the specific reference to the coverage of terrorism and terrorist financing. In revising its Recommendations, the FATF has extended the level of detail, notably as regards customer identification and verification, situations where a higher risk of money laundering may justify enhanced measures and situations where a reduced risk may justify less rigorous controls. The main aim of the proposal is to seek an application of the revised FATF 40 Recommendations in a co-ordinated and unified way across the EU. Specifically speaking the proposal contains the following provisions:

- Money laundering is defined as a criminal offence meaning that criminal law sanctions need to be applied in order to ensure effectiveness. The new definition of money laundering includes specific reference to terrorist financing. Lawful property being diverted to finance terrorism is part of the definition.
- Specific reference is made to trust and company service providers, including life insurance intermediaries. All persons trading in goods or providing services and accepting cash payments above the threshold fall under the Directive's scope.
- The definition of financial institution is amended in line with the approach followed by the FATF. Any undertaking defined as a financial business is considered a financial institution. Member States are, however, given the option to consider some of them low risk institutions.
- Insurance intermediaries, terrorism, beneficial owner, trust and company service providers, politically exposed persons, the financial intelligence unit, business relationship and shell banks are all defined.
- The definition of criminal activity has been amended to include terrorism as a separate element.
- Credit and financial institutions must not maintain anonymous accounts.

- Provisions obliging those subject to the Directive to know their customers and understand the nature of their financial business activities are outlined. Procedures may be conducted on a risk-sensitive basis.
- Business relationships may begin while the customer identification procedures are in progress.
- In cases where customer identification cannot be carried out in a satisfactory way the relationship should be terminated and old accounts examined where there might be a money laundering risk.
- Specific provisions are included referring to high-risk money laundering possibilities. The provisions include three such cases, namely cases where there is no face-to-face contact with the customer; cross-frontier correspondence banking relationships and relations with politically exposed persons.
- All data relating to suspicious transactions should be forwarded to the financial intelligence unit as the body responsible for receiving and processing such information.
- Member States are urged to do all in their power to prevent employees from being threatened or victimized in cases where they have sent reports to the authorities leading to an investigation.
- Clients should not be informed that their transactions are under investigation.
- Member States are required to keep appropriate statistics on the use made of and results obtained from suspicious transaction reports.
- Bureaux de change, trust and company service providers must be subject to a licensing or registration obligation. Casinos must be licensed.
- Member States are required to impose appropriate penalties for infringement of the national implementing measures adopted by the Directive.
- A new Committee on the Prevention of Money Laundering has been adopted to define the implementing measures.