

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

2004/0137(COD) - 26/05/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a report drafted by Hartmut NASSAUER (EPP-ED, DE) following an agreement with Council. The principal amendments to the Commission's text were as follows:

- Parliament defined more clearly the responsibilities of financial institutions, lawyers, insurance agents and others involved in money laundering or the funding of terrorism;
- there is inserted into the text a requirement for financial institutions to identify not only the director of a company, casino or trust which carries out a transaction but also all "beneficial owners" who control at least 25% of those entities. When banks deal with companies, they must identify anyone who controls at least 25% of the firm (the Commission proposed a 10% threshold);
- the Commission must present a report to the European Parliament and to the Council on the threshold percentages in 36 months, paying particular attention to the possible expediency and consequences of a reduction of the percentage in points from 25% to 20%;
- Parliament voted to raise the threshold for identifying customers in casinos slightly. Whereas the Commission proposed that all clients with betting chips worth EUR 1,000 or more be identified, the Parliament has suggested a threshold of EUR 2000;
- terrorist financing is defined as a separate offence to money-laundering as terrorism is often funded through legal sources while money laundering involves criminal proceeds. "Terrorist financing" means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA;
- Member States must require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the execution of a transaction. Parliament has inserted certain derogations to this rule, notably concerning life insurance business, and the opening of a bank account;
- Member States must prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks. Parliament inserted a derogation, stating that in all cases the owners and beneficiaries of existing anonymous accounts or anonymous passbooks shall be required to submit to customer due diligence requirements as soon as possible and in any case before the accounts or passbooks are used in any way;
- banks, lawyers and others covered by the Directive will have to report all 'high-risk' transactions to the national financial intelligence unit, which should be provided with adequate resources. Failure to do so will lead to them being penalised. However, this does not apply in situations when notaries, independent legal professionals, auditors, external accountants and tax advisors are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings;

- in the case of credit and financial institutions and casinos, competent authorities will have enhanced supervisory powers, notably the possibility to conduct on-site inspections;
- within two years of the expiry of the deadline for transposition the Commission shall draw up a report on the implementation of the Directive. For the first such report, the Commission must include a specific examination of the treatment of lawyers and other professionals;
- the application of the provisions of the Directive concerning the adoption of technical rules will be suspended four years after the entry into force of the Directive. On a proposal from the Commission, Parliament and the Council may renew the provisions and, to that end, will review them prior to the expiry of the four-year period.