COMMISSION OF THE EUROPEAN COMMUNITIES

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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

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

The Commission's firm commitment to capital market and financial services liberalisation has been clearly demonstrated by the presentation of the Action Plan for Financial Services, which was endorsed by the European Council meeting in Cologne in June 1999.

However, financial market liberalisation must not endanger financial stability and a reliable regulatory and supervisory framework is needed to make sure that such liberalisation and freedom of capital movements is not used for undesirable purposes, such as money laundering.

For this reason the adoption of the Directive to update and extend the 1991 anti-money laundering Directive was identified as one of the priority objectives of the Action Plan and the Commission gave an undertaking to present the corresponding proposal by mid-1999.

The present proposal represents the fulfilment of that commitment.

The 1991 anti-money laundering Directive[1] was a landmark in the fight against criminal money and its potentially highly damaging effect on the financial system. The Directive is based on a wide coverage of the financial sector. It requires financial firms to know their customers, to keep appropriate records and establish anti-money laundering programmes. Most importantly, it requires banking secrecy rules to be suspended whenever necessary, and any suspicions of money laundering to be reported to the authorities.

The Community Directive is frequently cited as one of the major international instruments in this field, alongside the 1988 UN Vienna Convention[2], the 1990 Council of Europe Strasbourg Convention[3] and the Forty Recommendations of the Financial Action Task Force on Money Laundering[4].

As political awareness has grown of the threat to our society posed by organised crime, increased attention has been focussed on the possibility of successfully fighting organised crime by targeting the vast sums of money generated by such activity, money being the principal objective and the life blood of crime. As a result the subject of money laundering has regularly appeared on the agenda of the European Council. Money laundering is also covered by the Action Plan to combat organised crime[5] and has been the subject of two major reports and resolutions of the European Parliament[6].

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1 OJ L 166, 28.6.1991, p.77.

2 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 19 December 1988.

3 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

4 The FATF is the foremost world body dedicated to the fight against criminal money. It was created by the G7 in 1989 and currently has 28 members, including the European Commission and all the EU Member States. (See http://www.oecd.org/fatf/)

5 OJ C 251,15.8.1997, p.1.

6 Doc. A4-0187/96 and OJ C 198, 8.7.1996, p.245; Doc. A4-0093/99 and OJ C

Both the Council of Ministers and the European Parliament have called for additional measures to enhance the European Union's anti-money laundering effort.

Since the Directive was adopted in 1991 both the money laundering threat and the response to that threat have evolved. It is the view of the Commission, supported by the European Parliament and the Member States, that the response of the European Union must also now move forward.

Accordingly, as an integral part of the Action Plan for Financial Services, and in line with the wishes of the Member States and the European Parliament, the Commission is presenting the attached proposal to update and extend the 1991 Directive. The main changes to the 1991 Directive are a widening of the prohibition of money laundering to embrace not only drugs trafficking but all organised crime, and an extension of the obligations of the Directive to certain non-financial activities and professions. A cooperation between national authorities and the Commission in case of illegal activities against the financial interests of the European Communities is also required. Finally, the opportunity is being taken to clarify certain aspects of the 1991 text.

The international nature of the fight against money laundering

The European Union is not alone in conducting an active campaign against money laundering. An effective global campaign against money laundering is a widely shared objective. Far from being restrictive in nature or an obstacle to liberalisation, a successful effort against money laundering is in fact an essential pre-condition for enhancing international trade and commerce, financial market liberalisation and the free movement of capital under optimum conditions.

The Commission participates in this international effort through support for the FATF and the UN and via its international programmes. The Commission is a full member of the FATF, which is committed to the creation of a world-wide anti-money laundering network. Indeed, to be effective, this effort must embrace the largest possible number of countries. Ideally in the long term all countries should join this effort to make it harder for criminals to be able to enjoy the profits of criminal activity. Real progress is being made in this area as an increasing number of countries subscribe to the international standards set by the FATF and agree to undergo a mutual evaluation process. At the same time the FATF, on the basis of a mandate from the G7, is continuing its work to establish criteria to identify countries and jurisdictions that can be considered to be "non-cooperative" in the fight against money laundering.

Just as the 1991 Directive moved ahead of the original FATF 40 Recommendations in requiring obligatory suspicious transaction reporting, the European Union should continue to impose a high standard on its Member States, giving effect to or even going beyond the 1996 update of the FATF 40 Recommendations. In particular the EU can show the way in seeking to involve certain professions more actively in the fight against money laundering alongside the financial sector.

The EU Directive will thus continue to be a leading international instrument in the fight against money laundering. As an important part of the acquis communautaire the EU anti-money laundering rules will also represent the standard set for the applicant countries and other countries with which the Union is working in this area.

Implementation of the 1991 Directive

As required by Article 17 the Commission has presented two reports[7] on the implementation of the Directive to the Council of Ministers and to the European Parliament.

These reports cover a number of aspects of the European Union's efforts to combat money laundering.

The Commission believes that the Directive has been well implemented by the Member States and that the financial sector, and in particular the banks, have made a real effort to help prevent the entry of criminal money into the financial system. The Commission's second report contains some statistics on the number of suspicious transaction reports made under the Directive. It is generally accepted that the tightening of controls in the banks has led to a search by money launderers for alternative ways of disguising the criminal origin of their funds.

The Council adopted conclusions on the Commission's first report (see Annex 1 to COM(1998) 401 final), while the European Parliament adopted a report and resolution on each of the Commission's reports (see footnote 6). The European Parliament issued a strong call for renewed efforts in this important area as a matter of urgency.

The Action Plan to combat organised crime

The European Council held in Dublin on 13 and 14 December 1996 set up a High Level Group to draw up a comprehensive Action Plan to combat organised crime containing specific recommendations and realistic timetables for their implementation. The resulting Action Plan was adopted by the Council on 28 April 1997 and approved by the European Council meeting in Amsterdam in June 1997.

Chapter VI of the Action Plan is concerned with organised crime and money. Recommendation No 26 covers a number of aspects of the fight against money laundering, certain of which fall within the scope of the Community Directive. In particular, Recommendation 26(e) states that "the reporting obligation in Article 6 of the Money Laundering Directive should be extended to all offences connected with serious crime and to persons and professions other than the financial institutions mentioned in the Directive….".

The prohibition of money laundering

Article 2 of the Directive provides that money laundering shall be "prohibited" in all Member States.

As explained in the Commission's first report it had not been possible to reach agreement in the Council on a requirement in the Directive to criminalise money laundering. Nonetheless the statement annexed to the Directive gave this commitment (albeit outside the framework of the Directive) and all of the Member States have in fact made money laundering a criminal offence.

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[7] COM(95) 54 final and COM(1998) 401 final.

The Directive only requires the prohibition of the laundering of drugs proceeds, as required by the Vienna Convention, but encourages Member States to apply the approach of the Strasbourg Convention, namely of combating the laundering of the proceeds of a wider range of criminal offences (often referred to as "predicate offences").

The FATF strengthened its relevant recommendation in 1996 to state that "each country should extend the offence of drug money laundering to one based on serious offences". This corresponds to a growing trend based on the dramatic increase in non-drugs based organised crime and on the realisation that having a wide range of predicate offences should improve suspicious transaction reporting and above all facilitate international cooperation between judicial and police authorities in different countries.

A distinction must be made between the penal law treatment of money laundering (i.e. the definition of the crime of money laundering) and the specific anti-money laundering obligations imposed on the financial sector and other vulnerable activities and professions.

On 3 December 1998 the Council adopted a Joint Action on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime[8]. In this Joint Action Member States agreed that no reservations should be made or upheld in respect of Article 6 of the Strasbourg Convention in so far as serious offences are concerned. Serious offences are defined in terms of the maximum or minimum prison sentences attached to them. This definition is widely drawn – offences with a maximum sentence of more than one year or with a minimum sentence of more than six months.

Article 6 of the Strasbourg Convention is concerned with laundering offences. The result of the Joint Action is therefore that the Member States have agreed to criminalise the laundering of the proceeds of all serious offences. This does not necessarily imply however that the reporting obligation imposed on the financial sector should cover exactly the same criminal activity. Such equivalence will be found in some Member States but not in others.

The question therefore arises as to whether it would also be appropriate to base the prohibition of money laundering contained in the Directive on the same concept of "serious offences".

Under the Directive the institutions subject to it must report their suspicions of money laundering to the authorities. The anti-money laundering defences thus depend to a large extent on the goodwill and efforts of, in particular, the financial sector. The financial sector has expressed considerable reticence concerning any reporting requirement that would extend to an excessively wide range of offences, even including relatively minor ones. The Commission is now proposing (see below) that the obligations of the Directive be extended to other vulnerable activities and professions which have not hitherto been involved in the fight against money

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

laundering in most Member States. Here too, the inclusion of a very wide range of offences might complicate the active involvement and commitment of those activities and professions

The Commission has concluded that for the purposes of the Directive, and its extension to certain non-financial activities, a reporting obligation based on serious offences might be too broad. The Commission is therefore proposing that the reporting obligation under the Directive should be based on activities linked to organised crime or damaging the European Communities financial interests.

Such an approach would be in line with both the letter and the philosophy of the Action Plan to combat organised crime. In addition, it may be easier for the persons and institutions subject to the Directive to develop a suspicion of and report on the possible involvement of an organised crime group than to assess the seriousness of the underlying criminal activity and its precise criminal law treatment in terms of the related maximum or minimum prison sentence.

The Commission believes that the full commitment of the financial sector and of the new activities and professions to be brought within the scope of the Directive will be guaranteed where the clear objective is to combat organised crime.

Member States will of course remain free to extend their national anti money laundering legislation to any other form of criminal activity Member States will of course remain free to extend their national anti money laundering legislation to any other form of criminal activity.

The coverage of financial sector activities

The 1991 Directive applies to credit institutions and to financial institutions in the widest sense.

However, the European Parliament in its report and resolution of March 1999 expressed doubts as to whether certain specific activities, such as those of bureaux de change and money remittance offices were clearly covered by the Directive.

The definition of financial institutions in the Directive is based on the annex to the Second Banking Directive and it is true that differences in the language versions of that annex may lead to some confusion as to the Directive's precise coverage. Given the evidence that these activities are increasingly targeted for money laundering purposes it is essential that it be absolutely clear that they are covered by the Directive. The Commission therefore proposes that this coverage be specified in the definition of financial institution.

Parliament also expressed doubts as to the coverage of investment firms, the Investment Services Directive (ISD) having been adopted in 1993, some time after the adoption of the Money Laundering Directive. To remove any doubt the Commission proposes that the definition of financial institution also be extended to include investment firms as defined in the ISD.

The coverage of activities outside the financial sector

Article 12 of the Directive provides that "Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes".

As the Commission's first report noted, this article imposes an obligation but its broad wording allows Member States a large measure of discretion in its application.

There is general agreement that as the money laundering defences of the banking sector have become stronger money launderers have sought alternative ways of disguising the criminal origin of their funds.

This trend has been noted in the annual Typologies Reports of the FATF. The 1996-97 Report states that " as regards money laundering techniques, the most noticeable trend is the continuing increase in the use by money launderers of non-bank financial institutions and non-financial businesses relative to banking institutions. This is believed to reflect the increased level of compliance by banks with anti-money laundering measures…..Money launderers continue to receive the assistance of professional facilitators, who assist in a range of ways to mask the origin and ownership of tainted funds".

The 1998 Report of the UN Office for Drug Control and Crime Prevention on financial havens, banking secrecy and money laundering refers to the frequent misuse of lawyers and accountants to help hide criminal funds.

There have also been numerous cases where the real estate sector is used for money laundering purposes.

The Money Laundering Contact Committee has had a number of discussions on this matter. The involvement of the professions, and particularly the legal professions, is especially sensitive, given the duty of discretion and confidentiality that exists in every Member State.

This sensitivity was already apparent in the Council's conclusions on the Commission's first report when it encouraged " a more coordinated application of the Directive, particularly with respect to ..... the professions and types of undertakings which are subject to the Directive's provisions *taking into account the special status of legal professions ...".*

In point 4 of its resolution on the Commission's first report, the European Parliament "calls on the Commission, taking account of the preliminary work of the Contact Committee, to submit a proposal for a revision of the Directive .... to include within the direct scope of the Directive 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".

However the question of the application of anti-money laundering rules to professions and activities outside the conventional financial sector has also been discussed in other fora. The conclusions of the Dublin European Council of December 1996 contain a commitment to the "full application of the Directive on money laundering

and its possible extension to those relevant professions and bodies outside the classical financial sector". That same European Council established the High Level Group on Organised Crime which established the Action Plan to combat organised crime. Recommendation 26, much of which is concerned with anti-money laundering measures states in (e) that "the reporting obligation in Article 6 of the money laundering Directive should be extended to ..... persons and professions other than the financial institutions mentioned in the Directive". The target date set to achieve this was the end of 1998.

The European Parliament returned to this question in its Report and Resolution in response to the Commission's second implementation report. In Point 1 of its resolution adopted in March 1999 the European Parliament:

" calls upon the Commission to table a legislative proposal aimed at amending the Money Laundering Directive;

such a legislative proposal should comprise

(a) the inclusion 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 into 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,"

The Commission agrees with The European Parliament on the inclusion of most of the activities and professions referred to in the above Resolution.

It believes that it is not unreasonable fully to involve the real estate sector, accountants and auditors and casinos in the fight against organised crime. These activities and professions should be obliged to properly identify their clients and report their suspicions of money laundering to the appropriate anti-money laundering authorities established by the Member States. These professions would of course be given protection against any civil or criminal law liability when a suspicion was reported.

The Commission has doubts about the inclusion of art dealers and auctioneers given the problem of defining the exact coverage and definition of such activities and the problems of monitoring the application of any rules that are imposed. Any extension to art dealers would also raise the question of applying the same obligations to any dealer in high value items, including for example luxury car dealers, jewellery shops or stamp and coin dealers.

In the case of notaries and other independent legal professionals the obligations of the Directive would only apply in respect of specific financial or company law activities where the money laundering risk is the greatest.

Given the particular status of the legal professions, as stressed inter alia by the European Parliament, lawyers would be exempted from any identification or reporting requirement in any situation connected with the representation or defence of the client in legal proceedings and, again to make full allowance for the professional duty of discretion, as called for by the European Parliament, Member States would be given the option of allowing lawyers to communicate their suspicions of money laundering by organised crime not to the normal anti-money laundering authorities but to their bar association or equivalent professional body.

The Member States will determine the appropriate forms of cooperation between the bar associations or professional bodies and the normal anti-money laundering authorities. The Commission will monitor closely the effectiveness of these procedures.

With this special treatment for lawyers the Commission is striving to include this profession in the anti-money laundering effort while safeguarding the special role of the lawyer in our society. Professional confidentiality is a general principle which is encountered but takes a different form in every Member State depending on the structure of the relevant legal system. The basic objective of the proposal in this area is to make it more difficult for actual or potential money launderers to attempt to misuse the services of the lawyer, possibly by providing inaccurate or incomplete information, safe in the certainty that the attempt if discovered would not be reported to any other higher authority. At the same time the lawyer would not be left alone faced with a suspicion of serious criminal activity. Appropriate sanctions should, however, be introduced where a report to the bar association should have been made but was not made.

Identification of customers in non-face to face transactions

Article 3 of the Directive requires that banks and financial institutions should identify their clients, keep appropriate records and take reasonable measures to seek to identify beneficial owners.

In its first report the European Parliament expressed concern at the weakening of the client identification requirements, particularly in the context of direct banking.

The Contact Committee has discussed the problem of non-face to face transactions on a number of occasions and has agreed a number of principles to be applied by credit and financial institutions to ensure that customers are adequately identified.

The Commission believes that these agreed principles, which provide very useful guidance while allowing for a degree of flexibility should be incorporated in the Directive via the addition of an annex.

The Commission believes that this question must continue to be monitored closely in the light of continuing technical developments in the financial sector.

Exchange of information

An exchange of information concerning money laundering is essential for the effectiveness of the anti-money laundering effort. At this stage of integration, the Commission proposes such an exchange in case of illegal activities related to the European Communities' financial interests.

Need for a regular review of the Union's action in this area

The Commission will continue to make regular reports to the European Parliament and the Council on the implementation of the Directive and the effectiveness of action in this area.

As part of this work a number of elements dealt with in this proposal will need to be kept under particular review, for example the response of the professions and activities to be brought within the Directive's scope, the effectiveness of the special reporting arrangements for independent legal professionals and the possible repercussions of the arrangements for client identification in non-face to face transactions on electronic commerce.

Comments on the individual articles

Article 1 of the 1991 text would be replaced by a new article in which a number of changes are proposed to the definitions to:

– Include the branches of Community credit and financial institutions in the definitions of 'credit institutions' and 'financial institutions', thereby making it clear that such branches must report suspicions to the host state authorities and that the host state authorities are responsible for making sure that adequate anti-money laundering defences are in place;

– To make it clear that bureaux de change and money transmitters are subject to the Directive;

– To include investment firms;

– To amend the definition of 'criminal activity' to cover not just drugs trafficking but also all organised crime and illegal activities affecting the financial interests of the Communities as the basis of the prohibition of money laundering.

New Article 2a

This article widens the range of activities and professions subject to the obligations of the Directive. The credit and financial institutions already covered by the 1991 text are referred to in the other provisions of the Directive as the 'institutions' while the new legal or natural persons added to the coverage of the Directive are referred to as the 'persons'.

The article specifies the list of operations involvement in which will bring notaries and other legal professionals within the scope of the directive. These activities are essentially of a financial or company law nature;

Article 3 of the 1991 text is replaced by a new Article 3 again dealing with the requirements of client identification.

A provision is included on non-face to face transactions and reference is made to the principles and procedures set out in the annex.

A special transaction threshold is set for the clients of casinos purchasing gambling chips.

Article 6 of the 1991 text is replaced by a new Article 6 again dealing with the obligation to report suspicions of money laundering to the authorities.

This obligation will apply to all the institutions and persons subject to the directive.

Member States would have the option of allowing independent legal professionals to report their suspicions to their bar association or other professional association. This must be a Member State option as at least one Member State already obliges certain lawyers, when acting as financial intermediaries, to report money laundering suspicions in the same way as the financial sector.

Under the proposal such professionals would be exempted from the reporting requirement where they are representing the same client in any formal legal proceeding. Advice sought directly or indirectly for the purpose of facilitating money laundering cannot be subject to a reporting exception.

Article 12 establishes a cooperation among national anti-money laundering authorities and, when competent, the Commission in cases of fraud or corruption damaging the European Communities' financial interests.

A new **Article 2** states that the Commission will carry out a particular examination of various aspects of the amended Directive, including the special regime for the legal professions and the possible impact of client identification procedures on e-commerce.

The remaining amending provisions are of a technical nature, to adapt the text to the inclusion of the 'persons' to be brought within its scope.

Annex: an annex is included setting out the principles and procedures agreed by the Money Laundering Contact Committee for client identification where there is no direct face-to-face contact between the credit or financial institution and the client.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47 (2), first and third sentences, and Article 95 thereof,

Having regard to the proposal from the Commission[9],

Having regard to the opinion of the Economic and Social Committee[10],

Acting in accordance with the procedure referred to in Article 251 of the Treaty[11]

(1) Whereas Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (hereinafter referred to as "the Directive" was adopted on 10 June 1991[12];

(2) Whereas in two reports presented to the European Parliament and the Council pursuant to Article 17 of the Directive the Commission has reported on the implementation of the Directive and on progress in the fight against money laundering[13];

(3) Whereas in its Reports and Resolutions in response to the Commission's two reports the European Parliament called for an updating and extension of the 1991 Directive[14];

(4) Whereas the Action Plan of the High Level Group on Organised Crime endorsed by the Amsterdam European Council on 16-17 June 1997, and in particular recommendation 26, called for additional efforts to combat money laundering[15];

(5) Whereas it is appropriate that the Directive, as one of the main international instruments in the fight against money laundering, should be updated in line

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9 OJ
10 OJ
11 OJ
12 OJ L 166, 28.6.1991, p. 77
13 COM(95)54 final and COM(1998)401 final
14 Doc. A4-0187/96 and OJ C 198, 8.7.1996, p. 245; Doc. A4-0093/99 and OJ C
15 OJ C 251, 15.8.1997, p. 1

with the conclusions of the Commission and the wishes expressed by the European Parliament and the Member States; whereas in this way the Directive should not only reflect best international practice in this area but should also continue to set a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime;

(6) Whereas the GATS allows Members to adopt measures necessary to protect public morals and to adopt measures for prudential reasons, including for ensuring the stability and integrity of the financial system; whereas such measures should not impose restrictions beyond what is justified to safeguard those objectives;

(7) Whereas the Directive does not establish clearly which Member State's authorities should receive suspicious transaction reports from branches of credit and financial institutions having their head office in another Member State nor which Member State's authorities are responsible for ensuring that such branches comply with Article 11 of the Directive;

(8) Whereas this question has been discussed in the Money Laundering Contact Committee established by Article 13 of the Directive; whereas the authorities of the Member States in which the branch is located should receive such reports and exercise the above responsibilities;

(9) Whereas this allocation of responsibilities should be set out clearly in the Directive by means of an amendment to the definition of "credit institution" and "financial institution" contained in Article 1 of the Directive;

(10) Whereas the European Parliament has expressed concerns that the activities of currency exchange offices ('bureaux de change') and money transmitters (money remittance offices) are vulnerable to money laundering; whereas these activities should already fall within the scope of the Directive; whereas to dispel any doubt in this matter the coverage of these activities should be clearly confirmed in the Directive;

(11) Whereas to ensure the fullest possible coverage of the financial sector it should also be made clear that the Directive applies to the activities of investment firms as defined in Council Directive 93/22/EEC (the Investment Services Directive)[16];

(12) Whereas the Directive only obliges Member States to combat the laundering of the proceeds of drugs offences; whereas there has been a trend in recent years towards a much wider definition of money laundering based on a broader range of predicate or underlying offences, as reflected for example in the 1996 revision of the 40 Recommendations of the Financial Action Task Force (FATF), the leading international body devoted to the fight against money laundering;

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16 OJ L 141, 11.6.1993, p. 27

(13) Whereas a wider range of predicate offences facilitates suspicious transaction reporting and international co-operation in this area; whereas, therefore, the Directive should be brought up to date in this respect;

(14) Whereas in the Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on money laundering, the identification, tracing, freezing, seizure and confiscation of instrumentalities and the proceeds from crime[17] the Member States agreed to make all serious offences, as defined in the Joint Action, predicate offences for the purpose of their criminalisation of money laundering;

(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;

(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;

(17) Whereas on 21 December 1998 the Council adopted a Joint Action on the basis of Article K.3 of the Treaty on European Union on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union[18]; Whereas this Joint Action reflects the Member States' agreement on the need for a common approach in this area;

(18) Whereas, as required by the Directive, suspicious transaction reports are being made by the financial sector, and particularly by the credit institutions, in every Member State; whereas there is evidence that the tightening of controls in the financial sector has prompted money launderers to seek alternative methods for concealing the origin of the proceeds of crime;

(19) Whereas there is a clear trend towards the increased use by money launderers of non-financial businesses; whereas this is confirmed by the work of the FATF on money laundering techniques and typologies;

(20) Whereas Article 12 of the Directive already provides for the extension of the obligations of the Directive to other vulnerable professions and categories of undertakings outside the financial sector;

(21) Whereas the question of vulnerable non-financial activities has been discussed on a number of occasions in the Money Laundering Contact Committee;

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17 OJ L 333, 9.12.1998, p. 1

18 OJ L 351, 29.12.1998, p.1

(22) Whereas the obligations of the Directive concerning customer identification, record keeping and the reporting of suspicious transactions should be extended to a limited number of activities and professions which have been shown to be vulnerable to money laundering;

(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;

(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;

(25) Whereas the Directive makes reference to "the authorities responsible for combating money laundering" to which reports of suspicious operations must be made; whereas in the case of independent lawyers and to take proper account of the professional duty of discretion owed by the lawyer to his client Member States should be allowed to nominate the bar association or other lawyers' professional organisation as the responsible authority; whereas the rules governing the treatment of such reports and their possible onward transmission to the police or judicial authorities and in general the appropriate forms of cooperation between the bar associations or professional bodies and the authorities responsible for combating money laundering shall be determined by the Member States;

(26) Whereas there is a growing trend for financial services to be ordered and provided using means (such as post, telephone, computer) which limit or avoid direct contact between the supplier and the purchaser; whereas even in such cases the rules of the Directive on customer identification must be respected; whereas the Money Laundering Contact Committee has examined such non-face to face operations and has agreed principles and procedures that should govern customer identification; whereas those principles and procedures should be incorporated in the Directive in an annex,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/308/EEC is hereby amended as follows

(1) Article 1 shall be replaced by the following:

"Article 1

For the purpose of this Directive

(A) 'Credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC[19] 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,

(B) Financial institution' means

> (1) an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list annexed to Directive 89/646/EEC; these include the activities of currency exchange offices ('bureaux de change') and of money transmission/remittance offices,
>
> (2) an insurance company duly authorised in accordance with Directive 79/267/EEC[20], in so far as it carries out activities covered by that Directive,
>
> (3) an investment firm as defined in Article 1 of Directive 93/22/EEC;

This definition of financial institution includes branches located in the Community of financial institutions whose head offices are inside or outside the Community,

(C) 'Money laundering' means the following conduct when committed intentionally:

> - the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,
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> - the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,
>
> - the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
>
> - participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.

Knowledge, intent or purpose required as an element of the above-mentioned activities may be inferred from objective factual circumstances.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were perpetrated in the territory of another Member State or in that of a third country.

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19 OJ 322, 17.12.1977, p. 30

20 OJ L 63, 13.3.1979, p. 1

(D) 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.

(E) 'Criminal activity' means

- a crime specified in Article 3 (1) (a) of the Vienna Convention [21],
- participation in activities linked to organised crime,
- fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests and
- any other criminal activity designated as such for the purposes of this Directive by each Member State.

(F) 'Competent authorities' means the national authorities empowered by law or regulation to supervise any of the institutions or persons subject to this Directive.

(2) The following Article 2a shall be inserted:

"Article 2a

Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:

(1) credit institutions as defined in point A of Article 1;

(2) financial institutions as defined in the point B of Article 1;

and on the following legal or natural persons acting in the exercise of their professional activities

(3) external accountants and auditors;

(4) real estate agents;

(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

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21 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances adopted on 19 December 1988 in Vienna.

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(e) execution of any other financial transactions

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

(7) transporters of funds

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

(3) Article 3 shall be replaced by the following:

"Article 3

(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.

(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.

(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.

(3a) By way of derogation from paragraph 2 identification shall be required of all customers of casinos purchasing or exchanging gambling chips with a value of Euro 1000 or more.

(4) Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.

(5) In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the institutions and persons subject to this Directive shall

take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

(6) The institutions and persons subject to this Directive shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.

(7) The institutions and persons subject to this Directive shall not be subject to the identification requirements provided for in this Article where the customer is a credit or financial institution covered by this Directive.

(8) Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

(4) In Articles 4 and 5 the words "credit and financial institutions" shall be replaced by "the institutions and persons subject to this Directive".

(5) Article 6 shall be replaced by the following:

"Article 6

(1) Member States shall ensure that the institutions and persons subject to this Directive and their directors and employees co-operate fully with the authorities responsible for combating money laundering:

(a) by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering,

(b) by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

(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.

(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 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.

(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."

(6) Article 7 shall be replaced by the following:

"Article 7

Member States shall ensure that the institutions and persons subject to this Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions and persons concerned shall apprise the authorities immediately afterwards."

(7) In Article 8 the words "Credit and financial institutions" shall be replaced by "The institutions and persons subject to this Directive".

(8) Article 9 shall be replaced by the following:

"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 administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

(9) In Article 10 the words "credit or financial institutions" shall be replaced by "the institutions and persons subject to this Directive".

(10) In Article 11 the words "credit and financial institutions" shall be replaced by "the institutions and persons subject to this Directive".

(11) Article 12 shall be replaced by the following:

"Article 12

1. Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the institutions and persons referred to in Article 2a, which engage in activities which are particularly likely to be used for money-laundering purposes."

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.

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

Article 2

Three years after the adoption of this Directive the Commission shall carry out a particular examination, in the context of the report provided for in Article 17 of Directive 91/308/EEC, of aspects relating to the specific treatment of independent legal professionals, the identification of clients in non-face to face transactions and possible implications for electronic commerce.

Article 3

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive by 31 December 2001 at the latest.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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 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.