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EUROPEAN PARLIAMENT

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A3-0082/91

****II**

RECOMMENDATION

of the Committee on Legal Affairs and Citizens' Rights

on the COMMON POSITION established by the Council with a view to the adoption of a directive on prevention of use of the financial system for the purpose of money laundering (C3-0062/91 - SYN 254)

Rapporteur : M. Geoffrey HOON

PE 148.278/fin.

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

* = Consultation procedure requiring a single reading

**I = Cooperation procedure (first reading)

**II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

*** = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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At its sitting of 22 November 1990, the European Parliament delivered its opinion at first reading on the Commission proposal for a Council directive on prevention of use of the financial system for the purpose of money laundering.

At the sitting of 21 February 1991 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meetings of 18, 19, 20 March 1991 and 2, 3 April 1991 the Committee on Legal Affairs and Citizens' Rights considered the common position and the draft recommendation. At the latter meeting it adopted the following recommendation by 17 votes to 1, with no abstentions.

The following were present for the vote:

Stauffenberg, Chairman; Vayssade, first vice chairman; Rothley, second vice chairman; Hoon, rapporteur; Bontempi; Cooney; Falconer; Fontaine (for Cabanillas Gallas); Garcia Amigo; Grund; Herman (Art. 111.2); Inglewood; Janssen van Raay; Klepsch (Art. 111.2); Malangre; Megahy (Art. 111.2); Price; Roenn (Art. 111.2); Roth-Behrendt (Art. 111.2); Salema; Schlechter (for Ramirez Heredia); Simpson; Wijsenbeek (for De Gucht).

This recommendation was tabled on 3 April 1991

The deadline for tabling amendments to the common position or proposals to reject it will appear on the draft agenda for the part-session at which the common position is to be considered.

A

RECOMMENDATION

(COOPERATION PROCEDURE : second reading)

concerning the common position established by the Council with a view to the adoption of a Council directive on prevention of use of the financial system for the purpose of money laundering (COM(90) 106 final¹ and COM(90) 593 final²)

The Committee on Legal Affairs and Citizens' Rights,

- having regard to the common position of the Council (C3-0062/91),

Recommends that the European Parliament amends the common position as follows:

Common position of the Council

Amendments

Amendments

(Amendment No. 1)
Sixth recital a (new)

Whereas, in the international context, the free movement of capital may constitute a risk if third countries do not apply comparable standards; whereas the Commission must therefore monitor the situation in third countries and reveal the identity of those countries applying inadequate standards in order to draw the attention of credit and financial institutions in the Community to the risk of dealing in financial transactions with similar institutions from those countries;

¹ OJ No. C 106, 28.4.1990, p. 6

² OJ No: C 319, 19.12.1990, p. 9

(Amendment No. 2)
Article 1, fifth indent

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|---|--|
| - "criminal activity" means a crime specified in Article 3(1)(a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State; | - "criminal activity" means a crime specified in Article 3(1)(a) <u>and (c)</u> of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State; |
|---|--|

(Amendment No. 3)
Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

Member States shall ensure that money laundering of proceeds from any crime is treated as a criminal offence according to their national legislation.

(Amendment No. 4)
Article 2a (new)

1. Member States shall ensure that proceeds from criminal activities or property obtained by means of these proceeds are subject to confiscation.
2. Member States shall ensure the availability of necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation.

(Amendment No.5)

Article 3, paragraph 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 to ECU 1000 or less or where a single premium is paid amounting to ECU 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 ECU 1000 threshold, identification shall be required.

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 the Directive shall not be required where the periodic premium or single premium amount or amounts to be paid in any given year does or do not exceed the amount fixed by paragraph 2 of this article. If the (1 word omitted) premium amount or amounts to be paid in any given year is or are increased so as to exceed the said threshold, identification shall be required.

(Amendment No. 6)

Article 11, paragraph 2

2. take appropriate measures to inform their employees of the provisions contained in this Directive and, where appropriate, establish special training programmes for their employees, to help them recognize activities which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

2. take appropriate measures so that their employees are aware of the provisions contained in this Directive, including participating in special training programmes for their employees, to help them detect operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

(Amendment No. 7)
Article 12a (new)

Member States shall undertake to:

- ensure the fullest and prompt cooperation on the part of their judicial and administrative authorities in connection with requests from judicial or investigating authorities in another Member State for inquiries to be conducted into serious crimes and serious criminal offences involving money laundering;
- ensure that credit and financial institutions cooperate similarly;
- provide for simplified and coordinated procedures for cooperation between the Member States' relevant authorities and bodies.

(Amendment No. 8)
Article 17

One year after 1 January 1993, and thereafter as often as necessary, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

One year after 1 January 1993, and whenever necessary and at least at three-yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

B

EXPLANATORY STATEMENT

1. The common position of the Council, adopted on 14 February 1991, follows the adoption by Parliament on 22 November 1990 of the HOON report (Doc. A3-273/90) on the proposal for a directive submitted by the Commission (COM(90) 196 final - SYN 106). In its modified proposal the Commission incorporated a number of amendments adopted by Parliament (COM(90) 592 final).
2. The Commission proposal was based on Article 57(2) of the EEC Treaty, with which Parliament agreed. The Council adopted Parliament's amendment to cite, in addition to the third sentence, also the first sentence of Article 57(2), but decided also to refer to Article 100a, to take account of the fact that the scope of the Directive extends beyond credit and financial institutions (see Article 12).
3. The broadening by the Council of the definition of "credit institution" and "financial institution" to institutions having their head office outside the Community, is to be welcomed. However, the Council limits the definition of "criminal activity" (serious crime in the initial Commission proposal) by only referring to Article 3(1)(a) of the Vienna Convention, thereby omitting Article 3(1)(c).
4. In Article 2 of the proposal, the Commission had put the obligation on the Member States to ensure that money laundering of proceeds from crime be treated as a criminal offence.
The Council stipulates that money laundering is prohibited, while according to Article 14 each Member State is required to take appropriate measures, in particular to determine the penalties to be applied for infringements. This approach, whereby the watering down of Article 2 is compensated by a new Article 14, could cause confusion.

Further, the Member States have agreed to adopt a statement for publication in the Official Journal to accompany this Directive. The aim of this statement is presumably to maintain national competence in the matter of criminal sanctions; however the Commission and the Parliament, in adopting Article 57(2) of the Treaties as the legal basis, are affirming that this matter is a Community competence. Thus publication of such a statement is to be regretted as being unnecessary.
5. Amendments adopted by the Parliament concerning the monitoring by the Commission of the situation in third countries and the particular care to be shown as regards transactions with certain third countries, the Channel Islands, Monaco, Liechtenstein, the Vatican State and Campione d'Italia, have unfortunately not been adopted by the Commission and the Council.
6. In a new Article 13 the Council has introduced the idea of a Contact Committee with a series of tasks relating to the implementation and

operation of the Directive. Although this is a constructive idea, the more limited idea of Parliament's Amendment No. 32, that the Member States themselves undertake to ensure the necessary cooperation, is to be preferred.

7. The date of implementation has been put back to 1 January 1993.
8. On the question of reporting, the Council states that a three year interval for a report (as requested by Parliament) was considered too long for keeping a close watch on implementation. The text proposed by the Council does not however guarantee the establishment of reports, so that the amendment adopted by Parliament in first reading, while implementing the idea of the Council of possible shorter intervals, should be preferred.

