

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Directive on prevention of use of the financial system for the purpose of money laundering***COM(90) 106 final — SYN 254**(Submitted by the Commission on 23 March 1990)**(90/C 106/06)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2), third sentence thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter 'money laundering'), the soundness and stability of the particular institution concerned and confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public;

Whereas lack of Community action against money laundering could lead Member States, with the purpose of protecting their financial system, to adopt measures which could be inconsistent with the completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movements and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level;

Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States' societies;

Whereas money laundering must be mainly combated by penal means and within the framework of international cooperation among judicial and law enforcement auth-

orities, as has been undertaken, in the field of drugs, by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (hereinafter 'the Vienna Convention');

Whereas a penal approach should, however, not be the only way to combat money laundering, since the financial system can play a highly effective role; whereas reference must be made in this context to the Recommendation of the Council of Europe of 27 June 1980 and to the Declaration of Principles adopted in December 1988 in Basle by the banking supervisory authorities of the Group of Ten, both of which constitute major steps in order to prevent the use of the financial system for purposes of money laundering;

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised; whereas measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited effects;

Whereas any measures adopted by the Commission in this field should be consistent with other action undertaken in other international fora; whereas the Commission, to this end, has participated, together with fifteen Community and non-Community countries, in the important work carried out by the Financial Action Task Force on money laundering, established in July 1989 by the Paris Summit of the Seven Most Developed Countries;

Whereas the European Parliament has requested the Commission, in several resolutions, to establish a global Community programme to combat drug trafficking, including provisions on prevention of money laundering;

Whereas, in order to avoid the difficulties of establishing a generally accepted definition of money laundering it is appropriate to follow the definition adopted by the Vienna Convention; whereas, however, since the

phenomenon of money laundering not only affects proceeds from drug offences, but also those from any serious crimes, this definition should be extended to include laundering of proceeds of serious criminal offences, as defined by the Member States;

Whereas making money laundering a criminal offence in the Member States, although it goes beyond the scope of the financial system, constitutes a necessary condition for any action to combat this phenomenon and in particular to permit cooperation between financial institutions or banking supervisors and judicial authorities; whereas, in this context, ratification and implementation by the Member States of the Vienna Convention is an essential measure to oppose money laundering in the field of drugs;

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and that they keep records of the identity documents required, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities; whereas such provisions must also be extended, as far as possible, to any beneficial owners;

Whereas ensuring that credit and financial institutions examine with special attention any unusual operation not having an apparent economic or lawful purpose and that they refrain from entering into any suspected money-laundering transaction is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon;

Whereas preserving the financial system from money laundering is a task which cannot be carried out by the judicial and law enforcement authorities without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in criminal cases; whereas a mandatory system of reporting suspicious transactions is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt employees and directors from responsibility by breaching restrictions on disclosure of information;

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and undertakings involving cash transaction business, Member States must extend, where applicable, this Directive to include these professions and undertakings,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

For the purposes of this Directive,

- *credit institution* is defined in accordance with the first indent of Article 1 of Council Directive 77/780/EEC <sup>(1)</sup>,
- *financial institution* means an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in Nos 2 to 12 and 14 of the list annexed to Council Directive 89/646/EEC <sup>(2)</sup>, as well as an insurance company duly authorized according to Council Directives 73/239/EEC <sup>(3)</sup> and 79/267/EEC <sup>(4)</sup>,
- *money laundering means*:
  - the conversion or transfer of property, knowing that such property is derived from a serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action,
  - and
  - 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 a serious crime,
- *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 interest in such assets,
- *serious crime* means a crime specified in Article 3 (1) (a) and (c) of the Vienna Convention, terrorism and any other serious criminal offence (including in particular organized crime), whether or not connected with drugs, as defined by the Member States,
- *competent authorities* means the national authorities empowered by law or regulation to supervise credit or financial institutions.

<sup>(1)</sup> OJ No L 322, 17. 12. 1977, p. 30.

<sup>(2)</sup> OJ No L 386, 30. 12. 1989, p. 1.

<sup>(3)</sup> OJ No L 228, 16. 8. 1973, p. 3.

<sup>(4)</sup> OJ No L 63, 13. 3. 1979, p. 1.

*Article 2*

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

*Article 3*

Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions and, in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.

*Article 4*

Member States shall ensure that credit and financial institutions examine with special attention any unusual transaction not having an apparent economic or visible lawful purpose, and that such institutions refrain from entering into any transaction which they have reason to suspect may have any relation to money laundering.

*Article 5*

Member States shall ensure:

1. that credit and financial institutions and their directors and employees cooperate fully with the relevant judicial or law enforcement authorities competent for criminal matters:
  - by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence,
  - by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation.
2. that the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, 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 for such employees and directors any civil or penal responsibility of any kind.

*Article 6*

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, these authorities discover facts that could constitute evidence of money laundering, they inform the relevant judicial or law enforcement authorities competent for criminal matters.

*Article 7*

Member States shall ensure:

1. that credit and financial institutions establish adequate procedures of internal control in order to prevent, detect and impede their engaging in operations related with money laundering;
2. that credit and financial institutions take the appropriate measures so that their employees are aware of the provisions contained in this Directive, and that they also establish 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.

*Article 8*

Member States shall extend the provisions of this Directive, where applicable, to professions and undertakings, other than credit and financial institutions, which because of their involvement with cash transaction business, may be particularly susceptible to being used for money laundering purposes.

*Article 9*

1. Member States shall take the measures necessary to comply with this Directive by 1 January 1992 at the latest.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. 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 10*

This Directive is addressed to the Member States.

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