



Federation of European Accountants
Fédération des Experts comptables Européens

To: Mrs Judith Sargentini
European Parliament Committee on Civil
Liberties, Justice and Home Affairs (LIBE)
European Parliament
60, Rue Wiertz
Altiero Spinelli 07H153
B-1047 Brussels

email: judith.sargentini@europarl.europa.eu

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Dear Mrs Sargentini,

Re: European Commission's proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

FEE (the Federation of European Accountants) is pleased to provide you with its comments on the European Commission's proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Fourth AMLD). FEE's ID number in the European Commission's Register of Interest Representatives is 4713568401-18¹.

FEE commends the constructive European Commission's review process of the Third AMLD in which we have actively participated². FEE welcomes the proposal on the Fourth AMLD adopted by the European Commission as it has the potential to contribute significantly to the fight against Money Laundering and Terrorist Financing.

Our comments, as set out in this letter, have been referenced with the relevant chapters and sections of the European Commission's proposed Directive.

1. General Provisions

1.1 Scope and Definitions

In accordance with the revised FATF recommendations, the European Commission's proposal specifically includes tax crimes related to direct and indirect taxes as a predicate offence. Generally, tax crimes have already been covered by the Third AMLD that referred

¹ FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 45 professional institutes of accountants and auditors from 33 European countries, including all of the 27 EU Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 700.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

² For previous FEE comments see

http://www.fee.be/index.php?option=com_chronoconnectivity&Itemid=106&category=31

to proceeds of “criminal activity” and set out a range of “serious crimes” that are considered to be criminal activities (offences which carry a punishment of imprisonment based on a mixture of maximum and minimum thresholds). Although the specific conditions might vary between the EU jurisdictions, tax *fraud* is generally classified as a serious crime across Member States. Including tax crimes in the proposed Fourth AMLD does not appear to be an extension of the scope of the Third AMLD, but it is a welcomed clarification.

Furthermore, we welcome the clarification in the definition of Politically Exposed Persons (PEPs) and the introduction of a more risk-based approach to their treatment. We particularly welcome the clarification concerning “persons known to be close associates of PEPs” as this could assist professionals in carrying out their duties more effectively.

Finally, we support that Recital 7 clarifies that legal professionals engaged in financial or corporate transactions, *including the provision of tax advice*, should be subject to the requirements of this Directive. However, this is not clearly identified in Article 2 (3) (b) where legal professionals are identified as obliged entities under the provisions of this Directive. Therefore we suggest that Article 2 (3) (b) is amended to specifically include the provision of tax advice by legal professionals as already clarified in Recital 7.

1.2 Risk Assessment

We support the broader use of the risk based approach introduced in the proposed Directive. Such risk assessments could form a good background material to update risk assessments produced by obliged entities which are tailored to their own business, experience and environment.

In this respect, we welcome the provisions in Article 7 requiring Member States to produce national risk assessments and to provide appropriate information to obliged entities to carry out their own risk assessments. However, unless these assessments are produced in due course, their effectiveness will be limited.

2. Customer Due Diligence (CDD)

2.1 General Provisions

In general, we consider that the information on CDD provided in Annexes I to III of the proposed Directive is helpful provided that it is clearly understood by competent authorities and professional bodies that this should not be used as a list of rules to be applied by obliged entities (e.g. claiming that if the factors mentioned exist, the associated risk level must be applied). Such guidance should not have automatic consequences disconnected from the specific circumstances of each customer or lead to a “tick the box” approach. These non-exhaustive lists simply provide guidance as to the factors that could be considered in deciding what level of risk to ascribe to a customer or transaction in conducting due diligence.

Under the Third AMLD, Member States had the option to apply equal treatment to all professionals regarding their CDD and reporting obligations in cases concerning judicial proceedings, including advice on instituting or avoiding proceedings. Although a number of Member States made use of this possibility to provide such an equal privilege to all professionals, this was not the case for many jurisdictions thus leading to discriminations between professions. Therefore, we welcome the clarification that Member States shall apply the same treatment equally to all professionals subject to the requirements of the

Fourth AMLD as regards their CDD (Article 12 (4)) and reporting obligations (Article 33 (2)) in cases concerning judicial proceedings, including advice on instituting or avoiding proceedings.

2.2 Simplified Customer Due Diligence

Although under the current EU AML regime a Simplified Due Diligence is not a full exemption from regular CDD but a simplified approach to lower risk areas, we welcome the clarification made in article 13. We also welcome the clarification that the onus is on the obliged entity to make the risk assessment and document it appropriately as well as the fact that sufficient monitoring should be applied even in the case of lower risk situations.

Furthermore, we consider appropriate that the guidance to be produced by the European Supervisory Authorities will be applicable only for financial institutions. As far as the accountancy profession is concerned, national professional institutes have often provided guidance for professionals in their country, which has proven to be valuable in the past and should be continued.

2.3 Enhanced Customer Due Diligence

According to the revised FATF Recommendations, Politically Exposed Persons (PEPs) are persons who have been entrusted with prominent public functions by foreign countries or domestically or by an international organisation³. We support the incorporation of the new FATF provisions for domestic PEPs and PEPs in international organisations using a risk based approach.

However, we remain concerned regarding the availability and accessibility of Customer Due Diligence information about PEPs. We appreciate that there are commercial products in this area, as well as some information available from web-based research. Nevertheless, we consider that Member State governments could provide more support to the obliged entities in this area and assist them in their fight against money laundering.

Therefore, we suggest that the European Parliament carefully analyses the European Commission's proposals and simplifies the availability and access to such information for professionals. Such support would not only be valuable in fulfilling their CDD and reporting obligations and contribute to make the fight against money laundering more efficient, it would also reduce the necessary resources and administrative burdens for obliged entities. Furthermore, such simplification would be vital for smaller practitioners for whom the resources required for accessing such information can be substantial.

2.4 Performance by Third Parties

We welcome the clarifications in Articles 24 to 28 regarding the reliance of obliged entities on third parties in order to meet the CDD requirements set out in the Directive. In particular, we strongly support the clarification provided in Article 26 that an obliged entity may not simply rely on a third party's declaration that the third party has obtained the required due diligence information, but must actually obtain that information. As required under Article 11 (1) (a), (b), and (c), such information relates to the identification of the

³ The FATF definition is intended to cover high ranking officials or senior management and not middle ranking or more junior individuals.

customer and the beneficial owner as well as the assessment of the purpose and intended nature of the business relationship.

3. Beneficial Ownership Information

We support the Commission in taking a significant step forward in this area, beyond the minimum requirement we expressed in our earlier comments⁴ regarding assistance from entities in establishing beneficial ownership. We consider the proposals in Article 29 as a significant improvement that, overall, should make the fight against money laundering more efficient and reduce the resources invested by obliged entities while improving risk awareness. Therefore, we welcome that the proposals:

- recognise a reasonable right to privacy for beneficial owners, by not requiring publication of this information, whilst improving accessibility for obliged entities; and
- ensure that those charged with the governance of business understand the beneficial ownership structure of these entities.

Whilst we do not support compulsory publication of beneficial ownership details as such to everyone, we do urge that Member States provide complete and up to date free to access corporate registries that will assist obliged entities and competent authorities in performing their due diligence and other operations prescribed by the Fourth AMLD.

4. Reporting Obligations

4.1 General Provisions

We support the provisions set out regarding Financial Intelligence Units (FIUs) and we fully agree with the retention of the protective measures for obliged entities and their personnel in Articles 36 and 37. Governments need to assure the confidentiality and safety of reporters not only in the performance of their role but also on any unintended consequences (such as threats or hostile actions). Therefore, it remains vital for the effective operation of the AML rules that Member States and competent authorities focus closely on the need to protect as far as possible all obliged entities and their personnel

4.2 Prohibition of Disclosure

The transition of customer's information to the FIUs in accordance with the requirements of the Directive is prohibited from being disclosed to the customer or other third party. Nevertheless, in accordance with Article 38, the prohibition of such disclosure is not applicable within the same network which is defined as the larger structure to which the person belongs and which shares common ownership, management or compliance control. If such definition will be applied, it will exclude most of the international organisations within the accountancy profession as the members of those "networks" are not generally subject to common ownership, management or compliance control⁵.

⁴ See FEE comments, 19 June 2012 http://www.fee.be/images/publications/anti-money/FEE_response_EC_application_report_Third_AMLD_120619206201233106.pdf

⁵ See FEE survey on Transnational Organisations and Practices within the Accountancy Profession, page 68 http://www.fee.be/images/publications/ethics/TOPs_080409_Clean1952008291754.pdf

We strongly urge the European Parliament to consider the expansion of the definition of a network based on common standards, methods and branding⁶. Under such definition, members in each of the national territories specifically agree to employ common principles relating to ethical, compliance and quality standards and where possible peer review is undertaken within the “network” to ensure that this agreement is adhered to.

5. Record keeping and Statistical Data

As there is no provision in the European Commission’s proposal regarding the retention/deletion of reporting records, obliged entities will be reluctant to delete reporting records that form an important set of evidence to defend themselves in case they are challenged by competent authorities. Therefore, we remain concerned that this may lead to indefinite retention which might be considered as not being in line with the data protection principles⁷.

The provisions regarding the retention of customer due diligence records might also need to be reviewed considering national commercial law and professional requirements. Usually, the retention of an accountant’s professional records is not necessarily linked to the completion of the business relationship, but is linked to the completion of a particular engagement or assignment for a client, such as a tax return, or an audit. It is a normal practice for customers to engage intermittently but over an extended period with accountancy firms, without there being any certainty as to when, or whether, a further engagement may occur. Because of this, it is not easy to be definitive as to when a business relationship concludes in order to comply with the proposed provisions of Article 39, or indeed the current provisions. We would welcome an alternative provision being proposed, such that customer due diligence records must be retained for either 5 years from the conclusion of a business relationship or for 5 years from the end of a professional engagement. This would enable entities to select more easily one method of determining the retention of records for AML and other professional and legal purposes.

6. Policies, procedures and supervision

We are supportive of the improvement proposed in this area as the requirement for group-wide AML policies will now apply consistently to all obliged entities.

However, we remain concerned that accountants in major jurisdictions outside of the European Economic Area that form part of such groups may have significant difficulties in applying such requirement as in certain of these jurisdictions accountants are still not fully included in the scope of the respective AML rules.

6.1 Internal procedures, training and feedback

We consider appropriate that for credit and financial institutions ESMA, EIOBA, EBA are charged with providing regulatory technical standards.

For other types of obliged entities, national professional guidance on the implementation of

⁶ See FEE Comments 19 June 2012 http://www.fee.be/images/publications/anti-money/FEE_response_EC_application_report_Third_AMLD_120619206201233106.pdf

⁷ See Article 17 of the proposed Data Protection Regulation http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf

the Fourth AMLD remains to have a key role. As mentioned in section 2.2. above, regarding the accountancy profession, national professional institutes have often provided such guidance for professionals in their country, which has proven to be valuable in the past in particular for smaller practitioners.

6.2 Supervision

We support the adoption of a risk-sensitive approach in supervision.

However, we note that such approach, as well as the requirement to assess the individual risk-based approaches adopted by obliged entities, is a challenging task.

Therefore, supervisors should ensure that high levels of competence and experience in anti-money laundering and terrorist financing matters as well as a good understanding of obliged entities, in particular regarding professional practice, are available among their staff members in order to effectively perform their supervisory tasks.

6.3 Co-operation

We welcome the provisions for enhanced co-operation between FIUs as it has the potential to strengthen defences against financial crime.

6.4 Sanctions

We welcome the introduction of minimum standards for administrative sanctions.

For further information on this letter, please contact Mrs Anastasia Chalkidou, FEE Project Manager at +32 (0)2 285 40 82 or via email at anastasia.chalkidou@fee.be.

Yours sincerely,



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Cc:

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