



Federation of European Accountants  
Fédération des Experts comptables Européens

To:  
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Dear Rapporteurs,

**Re: Draft opinions on 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 draft opinions tabled by the European Parliament (EP) Committees on Development (DEVE) and Economic and Monetary Affairs (ECON) regarding 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 4713568401-18<sup>1</sup>.

The European accountancy profession remains committed to the fight against money laundering and terrorist financing, which is crucial for the development of our economy, and will continue contributing to the development of more effective instruments in this respect.

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<sup>1</sup> 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 28 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.

## Chapter 1 of the proposed Directive: 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, which referred 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).

The European Commission's proposal to include tax crimes in the paragraph of serious crimes is not an extension of the scope of the Third AMLD, but is a welcome clarification.

The proposed amendment 3 of DEVE (including tax crimes as a separate paragraph) is an additional clarification to make clear that any tax crime must be designated as a predicate offence to money laundering, as long as it is classified as a crime in the relevant Member State.

## Chapter 2 of the proposed Directive: Customer Due Diligence (CDD)

### 2.2 Simplified Customer Due Diligence (SDD)

We welcomed the clarification in Article 13 by the European Commission, that before applying SDD measures, obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.

The proposed amendment 12 of DEVE clarifies that obliged entities must identify their customers and the beneficial owner(s) before identifying a business relationship as lower risk and thus apply SDD. The need to identify beneficial owners would, of course, not be applicable to companies listed on relevant regulated markets.

However, we support a clarification as to information which should be collected to assess the use of SDD, and it may be useful to expand this further. As an example, the Anti-Money Laundering Guidance for the Accountancy Sector issued by the Consultative Committee of UK Accountancy Bodies<sup>2</sup> describes SDD obligations as follows:

*"In all cases, even where clients qualify for simplified due diligence businesses<sup>3</sup> should gather knowledge about the client to allow understanding of:*

- *who the client is*
- *where required, who owns it (including ultimate beneficial owners)*
- *who controls it*
- *the purpose and intended nature of the business relationship*
- *the nature of the client*
- *the client's source of funds*
- *the client's business and economic purpose."*

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<sup>2</sup> See <http://www.ccab.org.uk/PDFs/070612%20CCAB%20Guidance%20Clean.pdf>

<sup>3</sup> In this Guidance, the term "businesses" refers to obliged entities

We also support ECON's proposed amendment 15, which would require the EBA, EIOPA and ESMA to issue guidelines on the risk factors to be taken into consideration and/or the measures to be taken in situations where SDD measures are appropriate within one year of the date of entry into force of the Fourth AMLD.

### **2.3 Enhanced CDD**

We support the incorporation of the new FATF provisions for domestic Politically Exposed Persons (PEPs) and PEPs in international organisations using a risk-based approach. However, we have previously expressed our concerns regarding the availability and accessibility of CDD information about PEPs, as 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.

In this context, the proposed DEVE amendment 13 requiring "evidence" needs further clarification, as it might create further uncertainty as to the type of evidence and level of research required by obliged entities. The approach to be taken by obliged entities in collecting such evidence should be made clear.

Furthermore, we would like to indicate our support for ECON's proposed amendment 16, which would require the EBA, EIOPA and ESMA to issue guidelines on the risk factors to be taken into consideration and/or the measures to be taken in situations where enhanced CDD measures need to be applied within one year of the date of entry into force of the Fourth AMLD.

### **Chapter 3 of the proposed Directive: Beneficial Ownership (BO) Information**

In the proposed Fourth AMLD, the European Commission took a significant step forward in this area. We consider the proposals in Article 29 to be 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.

The solution of requiring companies to hold BO information is practical and cost-efficient. However, we recognise the discussions, in particular at the G8 summit, concerning public registers and their connection to discussions on anti-avoidance rules. We remain of the opinion that, in order to achieve the anti-money laundering objective expressed in draft Article 29 proposed by the Commission, it is not necessary to make BO details publicly available. Therefore, we do not support the compulsory publication of BO details to everyone (as DEVE amendment 14 seems to indicate by requiring the establishment of a "public registry").

In light of the aforementioned political discussions and the fact that business registers already exist in Member States, we would like to reiterate our previous support<sup>4</sup> for the interconnection of such registers, as required by Directive 2012/17/EU<sup>5</sup>. We believe that it would be expedient to build upon the existing legal framework in order to better support obliged entities in their efforts to fulfil their anti-money laundering obligations.

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<sup>4</sup> See FEE response to the Online Questionnaire on the Single Market Act  
[http://www.fee.be/images/publications/sme-smp/EC\\_DG\\_MARKT\\_110228\\_EC\\_Single\\_Market\\_Act2320111810241.pdf](http://www.fee.be/images/publications/sme-smp/EC_DG_MARKT_110228_EC_Single_Market_Act2320111810241.pdf)

<sup>5</sup> See Directive 2012/17/EU on the interconnection of central, commercial and company registers  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:156:0001:0009:EN:PDF>

## Chapter 5 of the proposed Directive: Record-keeping and Statistical Data

In line with Article 41 of the EC proposal on the Fourth AMLD, Member States would need to maintain comprehensive statistics in order to facilitate reviews of the effectiveness of their systems to combat money laundering or terrorist financing.

According to the proposed DEVE amendment 22, Member States should also maintain in their annual report data about the number of Suspicious Transaction Reports (STRs) which result in further investigation. We welcome the intention to enhance transparency regarding effective STRs. Overall, STRs can have great utility in practice, because they help law enforcement bodies to get a better understanding of the environment and can both assist in current investigations and, on occasion, open up new lines of investigation. However, raw data about the number of STRs which resulted in further investigation may not be the most important information for the general public.

## Chapter 6 of the proposed Directive: Policies, procedures and supervision

### 6.1 Internal procedures, training and feedback

According to the proposed ECON amendment 7, Member States should ensure that obliged entities not only comply with the relevant rules and guidelines, but also have systems in place that actually minimise the risks of money laundering within those entities.

We do not think that this amendment is necessary, as obliged entities are already required under Section 6.1 of the proposed 4th AML Directive to set up all the necessary policies and procedures to minimise the risk of money laundering or terrorist financing and apply them in the context of their obligation to report on suspicious transactions.

### 6.4 Sanctions

According to the proposed ECON amendment 22, the level of sanctions should be linked to the turnover of a subsidiary rather than group consolidated turnover. We believe that the group basis has been applied in sanctions in other areas and suggest that it be retained in this area as well. We are concerned that an individual-entity approach may not always be consistent with the economic reality and could introduce the risk that subsidiaries might be used to circumvent rules.

For further information on this letter, please contact Ms Petra Weymüller, FEE Senior Manager at +32 (0)2 285 40 75 or via email at [petra.weymuller@fee.be](mailto:petra.weymuller@fee.be).

Yours faithfully,



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FEE President



Olivier Boutellis-Taft  
Chief Executive



Cc:

- Mr Juan Fernando Lopez Aguilar, Chair of LIBE Committee, European Parliament
- Mrs Judith Sargentini, Rapporteur of LIBE Committee, European Parliament
- Mrs Sharon Bowles, Chair of ECON Committee, European Parliament
- Mrs Eva Joly, Chair of DEVE Committee, European Parliament
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