

Money Laundering and the Fight Against Organised Crime

Current Status:

- On 27 July 1999, FEE signed the Charter of European Professional Associations in support of the fight against organised crime together with representatives of lawyers, notaries, and tax advisors. The signatories consider that the professions they represent have an important role in safeguarding the public interest.
- Therefore, the signatory organisations' national member bodies have a particular obligation to ensure that their affiliated professionals fully respect the legal provisions applicable to all citizens in the field of fraud, corruption and money-laundering together with a number of specific related rules applicable to each profession.
- In 2001, a Directive was approved which amended Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering. The implementation date for this Directive to be applied in the member states, is 15 June 2003. The obligations of the Directive concerning customer identification, record keeping and the reporting of suspicious transactions has been extended to a limited number of activities and professions including accountants and auditors.
- Where independent members of professions providing legal advice are ascertaining the legal position of a client or representing a client in legal proceedings, the Directive recognizes that it would not be appropriate to put these professionals under an obligation to report suspicions of money laundering in respect of these activities.
- Legal advice remains subject to the obligation of professional secrecy, unless the legal counsellor is: taking part in money laundering activities; the legal advice is provided for money laundering purposes; or the lawyer knows that the client is seeking legal advice for money laundering purposes.
- FEE notes that accountants should also be included in the category of professions that may be exempted in the aforementioned situation. FEE has strongly advocated this view to the European authorities, however, it is the national law implementing the Directive that could establish the exemption explicitly (article 1, paragraph 6).

Next Steps:

- The Financial Action Task Force , (FATF), is an inter-governmental body which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. On 20 June 2003 the FATF on Money Laundering revised its Forty Recommendations. The previous Forty Recommendations (issued in 1996) have been endorsed by more than 130 countries and are the international anti-money laundering standard.
- The scope of the FATF recommendation is wider than that of the EU Directive. The 16th recommendation states that "lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege."

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- The FATF recommendation restricts the scope of the obligation to carry out customer due diligence and to report to a well defined list of activities such as managing of client money, securities or other assets, organisation of contributions for the creation, operation or management of companies, creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- On request of the European Commission, FEE is regularly updating a survey of the implementation of the Charter in support of the fight against organized crime.
- The FEE Council decided to establish a Task Force that will follow up the implementation of the Money Laundering Directive in the EU member states and address recommendations to member bodies in this respect.

FEE Reference:

Charter of the European Professional Associations in Support of the Fight Against Organised Crime

<http://www.fee.be/secretariat/Positionpaper.htm>

European Reference:

Money Laundering Directive

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering

http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_344/l_34420011228en00760081.pdf

Other Reference:

FATF Forty Recommendations (2003)

The Financial Action Task Force (FATF)

<http://www.fatf-gafi.org/index.htm>

Proposed Revised International Standard on Auditing 240

IFAC Standard concerning "The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements"

<http://www.ifac.org/Guidance/EXD-Details.php?EDID=0023>

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About FEE:

The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. It groups together 41 professional bodies from 29 countries. Between them, these bodies have a combined membership of 500,000 individuals.