



Federation of European Accountants
Fédération des Experts comptables Européens



Auditing and Assurance



Survey on European and National Legislation and Guidance on the Prevention of Money Laundering and Terrorist Financing

July 2009

Standing for trust and integrity



Federation of European Accountants
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and National Legislation
and Guidance on the Prevention
of Money Laundering and Terrorist Financing**

July 2009

FEE Working Group on Anti-Money Laundering



About FEE

FEE (Fédération des Experts comptables Européens – Federation of European Accountants) represents 43 professional institutes of accountants and auditors from 32 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 500.000 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.

FOREWORD

Money laundering is a process in which the illicit source of assets obtained by criminal activity is concealed to obscure the link between the funds and the original criminal activity. It regrettably happens in almost every country in the world and takes an unacceptable toll on wealth and job creation and the public interest at large. The creation of the EU Internal Market and the dismantling of barriers – though being most helpful for legitimate business – may also provide increased opportunities for money laundering and financial crime.

In order to protect the financial system and other vulnerable professions and activities from being misused for money laundering, European and national legislation have been progressively adopted over the last decades requiring financial institutions and certain professions – such as the accountancy profession – to undertake due diligence on clients and to report suspicious activities.

Several international organisations and policymaking bodies such as the Financial Action Task Force (FATF) and the United Nations are active in this area, mainly by setting standards and developing guidance for their member states and promoting peer pressure mechanisms through international mutual evaluations.

Recognising the public interest, the accountancy profession and FEE have always been particularly committed to support the fight against money laundering wherever possible, helping professionals, firms, national professional institutes, governments and international organisations tackle the economic, social and governance challenges of a globalised economy. For example, a number of FEE member bodies have issued anti-money laundering guidance for accountancy practices and FEE has contributed to the FATF “Risk-Based Approach Guidance for Accountants”.

In order to offer a robust basis for further developments, FEE has launched this “Survey on European and National Legislation and Guidance on the Prevention of Money Laundering and Terrorist Financing”. The FEE Survey provides an overview of (i) European and international activities in general, (ii) system, scope and provisions of the Third EU Anti-Money Laundering Directive in particular, (iii) status of implementation of a number of its provisions in 23 EU Member States and the existence of similar provisions in Norway and Switzerland, as well as (iv) available guidance for accountants in the respective countries.

Taking into account that the European Commission rightly remains committed to fighting the plague of money laundering and has issued in June 2009 a call for tender for a study on the application of the Anti-Money Laundering Directive, I hope that the FEE survey and its findings will be an important contribution to this public interest objective.

The FEE Anti-Money Laundering Working Group chaired by Mrs. Karen Silcock, has performed outstanding work with a perfect timing for publication and is warmly invited to consider follow-up actions.

Hans van Damme
President

CONTENTS

1.	Introduction.....	6
1.1.	Anti-money laundering in the EU.....	6
1.2.	Anti-money laundering at international level.....	7
1.2.1.	Financial Action Task Force on Money Laundering – FATF	7
1.2.2.	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL	8
1.2.3.	United Nations	9
1.3.	Cooperation between Financial Intelligence Units.....	9
1.3.1.	EU Financial Intelligence Units' Platform	10
1.3.2.	FIU.NET	10
1.3.3.	Egmont Group.....	10
2.	Scope of survey.....	11
3.	Executive Summary	13
3.1.	Persons concerned	13
3.2.	Administrative Obligations.....	13
3.2.1.	Client due diligence measures	13
3.2.2.	Record keeping.....	14
3.2.3.	Internal procedures	14
3.2.4.	Raising awareness and training	14
3.2.5.	Supervision	14
3.3.	Reporting obligations.....	15
3.4.	Role of the accountancy profession	16
4.	European and national AML provisions.....	17
4.1.	Development.....	17
4.2.	Persons concerned	18
4.3.	Administrative Obligations.....	18
4.3.1.	Client due diligence measures	19
4.3.1.1.	Scope of client identification.....	19
4.3.1.2.	Legal persons as client	20
4.3.1.3.	Beneficial owners and ultimate beneficiaries of the client	21
4.3.1.4.	Documentation	21
4.3.1.5.	Risk-based approach	22
4.3.1.6.	National guidance	22
4.3.2.	Record keeping.....	23
4.3.3.	Internal procedures	23
4.3.4.	Raising awareness and training	24
4.3.5.	Supervision	24
4.4.	Reporting Obligations.....	26
4.4.1.	Reporting persons.....	26
4.4.2.	Transactions to be reported	27
4.4.3.	Grounds for reporting	27
4.4.4.	Professional privilege	28
4.4.5.	Competent authority.....	28
4.4.6.	Disclosure ("tipping off").....	28



5. Role of the accountancy profession	30
Appendix 1: Implementation and information overview	32
Appendix 2: FEE Questionnaire.....	48
Appendix 3: Statistics.....	53
Appendix 4: List of FIUs.....	54
1. Financial Intelligence Units in countries covered by this survey.....	54
2. FIUs in further countries across Europe and the World.....	54
Appendix 5: Glossary of Terms.....	55

1. INTRODUCTION

Money laundering is generally considered as the practice of engaging in financial transactions in order to conceal the identity, source, and/or destination of money, and is a main operation of the underground economy.

EU law requires all Member States to take effective measures to combat money laundering. Member States are free to decide on the exact definition of money laundering to apply in their jurisdiction, but all share the basic premise that money laundering includes not only the elements of concealment referred to above, but also the concept that money laundering refers to any generation of economic benefit through crime, including in many cases the mere possession of the fruits of one's own crime.

In the fight against money laundering, legislation has been adopted at EU and national level that requires financial institutions and certain professions to undertake due diligence on clients and to report suspicious activities. At the wider international level, standards and guidance on anti-money laundering and terrorist financing have been promulgated by the Financial Action Task Force on Money Laundering (FATF), with peer pressure mechanisms established and realised through international mutual evaluations.

1.1. Anti-money laundering in the EU

The creation of the EU Single Market and the breaking down of barriers aids legitimate business, but may also provide increased opportunities for money laundering and financial crime. Therefore, European legislation has been progressively adopted since 1991 to protect the financial system and other vulnerable professions and activities from being misused for money laundering and financing of terrorism purposes.

The relevant EU law in force since December 2005 is the Directive 2005/60/EC, generally referred to as the Third Anti-Money Laundering Directive (Third AMLD)¹, which repealed the First and the Second Anti-Money Laundering Directives².

The provisions of the Third AMLD oblige Member States to ensure that money laundering (ML) and terrorist financing (TF) is prohibited and that infringements of the respective national anti-money laundering provisions are threatened with penalties.

The national provisions implementing the Third AMLD must apply to – amongst others – auditors, external accountants and tax advisors acting in the exercise of their professional activities. National law has to set out a number of obligations for the profession, such as client due diligence measures, reporting and record keeping obligations, internal procedures, the training of staff and accountants.

¹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

² Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (First AMLD) and 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 (Second AMLD)

Member States should have brought into force the provisions necessary to comply with the Third AMLD by 15 December 2007. However, even by end of March 2009, more than 25 % of the Member States had not yet implemented the Third AMLD; according to the official data of the European Commission³ and to the findings of the FEE survey. Nevertheless, all Member States dispose of anti-money laundering legislation that implements the Second AMLD.

1.2. Anti-money laundering at international level

1.2.1. Financial Action Task Force on Money Laundering – FATF

At the wider international level, the Financial Action Task Force on Money Laundering (FATF), made up of 32 countries and territories across the world and 2 regional organisations (European Commission, Gulf Co-operation Council), is active in this area⁴. The FATF was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response to mounting concern over money laundering. A number of international bodies and organisations have observer status with the FATF, e.g. the International Monetary Fund (IMF) and the World Bank.

The work of the FATF mainly focuses on setting standards for national anti-money laundering and counter-terrorist financing programmes. The FATF Standards are comprised of the Forty Recommendations on Money Laundering⁵ and the Nine Special Recommendations on Terrorist Financing⁶, covering financial institutions as well as a number of designated non-financial businesses and professions (DNFBPs), including accountants.

Though not a binding international convention, many countries have made a political commitment to combat money laundering and terrorist financing by implementing these recommendations.

Further to the recommendations, the FATF adopted in June 2007 the “Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures”⁷. The Guidance is primarily addressed to public authorities and financial institutions with the purpose to support the development of a common understanding of what the risk-based approach involves, to outline the high-level principles involved in applying the risk-based approach and to indicate good public and private sector practice in the design and implementation of an effective risk-based approach.

³ See also European Commission overview: Transposition – State of play as at 27/03/2009
http://ec.europa.eu/internal_market/finances/docs/actionplan/index/directive_en.pdf

⁴ http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1_1,00.html

⁵ <http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF>

⁶ <http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf>

⁷ <http://www.fatf-gafi.org/dataoecd/43/46/38960576.pdf>

The risk-based approach allows the relevant professionals and companies to focus their resources on those clients, accounts, and transactions that are most vulnerable to money laundering and terrorist financing. It requires conducting an assessment of the varying risks associated with the different types of businesses, clients, accounts, and transactions that the firm handles.

Based on the above mentioned risk-based approach principles, the FATF worked on guidance for several professions, such as legal professionals, casinos, trust and companies service providers, real estate agents and also accountants.

In June 2008 the FATF adopted the “Risk-Based Approach guidance for accountants”⁸, that has been prepared for application to accountants in public practice. This guidance was developed by the FATF in consultation with representatives of the accountancy profession; FEE has attended the relevant meetings and contributed as far as possible and where appropriate.

The “Risk-Based Approach guidance for accountants” supports the development of a common understanding of what the risk-based approach involves, outlines the high-level principles involved in applying the risk-based approach, and indicates good public and private sector practice in the design and implementation of an effective risk-based approach. It is written at a high level to cater for the differing practices of accountants in different countries, and the different levels and forms of supervision or monitoring that may apply.

1.2.2. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL (formerly PC-R-EV) was established in 1997 as an evaluation and peer pressure mechanism reviewing the anti-money laundering measures and measures to counter the financing of terrorism in Council of Europe Member States⁹.

MONEYVAL has 28 permanent members, which are not members of the FATF or have previously not been members of the FATF (e.g. some Eastern European countries), two countries designated on a two years basis by the FATF Presidency, one active observer country (Israel) and some countries and organisations that have regular observer status (e.g. the USA and the IMF)¹⁰.

The aim of MONEYVAL is to ensure that its Member States have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields (such standards are included for example in the recommendations of the FATF).

⁸ FATF Risk-Based Approach Guidance for accountants dated 17 June 2008,
<http://www.fatf-gafi.org/dataoecd/19/40/41091859.pdf>

⁹ <http://www.coe.int/t/dghl/monitoring/moneyval/>

¹⁰ http://www.coe.int/t/dghl/monitoring/moneyval/About/Country_profiles_en.asp

It assesses its members' compliance with all relevant international standards in the legal, financial and law enforcement sectors through a peer review process of mutual evaluations. Its reports provide recommendations on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing and states' capacities to co-operate internationally in these areas¹¹.

1.2.3. United Nations

The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit (LEOCMLU) of the United Nations Office on Drugs and Crime (UNODC) is responsible for carrying out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism (GPML), established in 1997 in response to the mandate given by the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹².

GPML's broad objective is to strengthen the ability of Member States to implement measures in anti-money laundering (AML) and combating the financing of terrorism (CFT) and to assist them in detecting, seizing and confiscating illicit proceeds, as required under UN related instruments and worldwide accepted standards by providing relevant and appropriate technical assistance upon request from states.

It co-operates – and frequently acts in partnership – with international and regional organisations involved in AML and CFT activities, e.g. the World Bank, the IMF, and is active in its observer status with the FATF.

The Programme provides governments, law enforcement and Financial Intelligence Units with anti-money-laundering schemes; advises on improved banking and financial policies and assists national financial investigation services. Strategies include granting technical assistance to developing countries, organising training workshops, providing training materials, e.g. via eLearning, and transferring expertise between jurisdictions¹³.

1.3. Cooperation between Financial Intelligence Units

Financial Intelligence Units (FIUs) are responsible for following the money trail, to counter money laundering and terrorism financing. FIUs are an essential component of the international fight against money laundering, the financing of terrorism, and related crime. In order to achieve results, they need to cooperate within the EU and on international level.

¹¹ http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/3rd_round_MONEYVAL_en.asp

¹² <http://www.unodc.org/unodc/en/money-laundering/index.html>

¹³ <http://www.unodc.org/unodc/en/money-laundering/technical-assistance.html>

1.3.1. EU Financial Intelligence Units' Platform

The "EU Financial Intelligence Units' Platform" (EU-FIU Platform) is an informal group set up in 2006 by the European Commission, which gathers FIUs from the EU Member States. The European Commission participates in the Platform and provides support. The main purpose is to facilitate cooperation and exchange of information among FIUs of EU Member States, with a view to identify problems and good practices in the framework of the implementation of the Third AMLD¹⁴.

In 2008, the Platform adopted a report on "Feedback on money laundering and terrorist financing cases and typologies"¹⁵ and a report on "Confidentiality and data protection in the activity of FIUs"¹⁶.

1.3.2. FIU.NET

FIU.NET is a decentralised computer network designed to connect EU FIUs using modern technology and computers to efficiently exchange financial intelligence information¹⁷.

FIU.NET encourages co-operation, and enables FIUs to exchange financial intelligence quickly, securely, and effectively. The main purpose of this co-operation is to further the fight against organised crime and the misuse of the financial system for the purpose of money laundering and terrorism financing.

1.3.3. Egmont Group

Since 1995, a number of FIUs began working together in an informal organisation known as the Egmont Group (named for the location of the first meeting at the Egmont-Arenberg Palace in Brussels)¹⁸. By December 2008, the Egmont Group consisted of FIUs from 107 countries across the world¹⁹.

The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. This support includes expanding and systematising international cooperation in the reciprocal exchange of information.

¹⁴ http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm#fiu-platform

¹⁵ http://ec.europa.eu/internal_market/company/docs/financial-crime/fiu_report_en.pdf

¹⁶ http://ec.europa.eu/internal_market/company/docs/financial-crime/fiu-report-confidentiality_en.pdf

¹⁷ <http://www.fiu.net/>

¹⁸ http://www.egmontgroup.org/info_paper_final_092003.pdf

¹⁹ http://www.egmontgroup.org/list_of_fiuis.pdf

2. SCOPE OF SURVEY

The FEE survey presents an overview of the following information:

- System, scope and provisions of the Third AMLD in general;
- The status of implementation of a number of provisions of the Third AMLD in 23 of the 27 EU Member States (Austria, Belgium, Czech Republic, Cyprus, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK)²⁰ and the existence of similar provisions in Norway and Switzerland;
- Available guidance for accountants in the respective countries.

FEE has collected the information via a questionnaire containing 33 questions²¹. The questions could generally be answered by “yes” or “no”; but additional individual comments were also possible. An overview of answers to the FEE questionnaire received from FEE Member Bodies in Europe sorted by country (EU Member States and other European countries) is available in Appendix 1.

The survey is based on information provided by the following FEE Member Bodies in EU Member States²²:

Austria	Kammer der Wirtschaftstrehänder – KWT
Belgium	Institut des Experts-Comptables et des Conseils Fiscaux – IEC
	Institut des Réviseurs d’Entreprises – IRE
Cyprus	Institute of Certified Public Accountants of Cyprus – ICPA
Czech Republic	Komora Auditoru Ceske Republiky – KACR
Finland	HTM-tilintarkastajat ry
	KHT-yhdistys
France	Ordre des Experts Comptables France –OEC
	Compagnie Nationale des Commissaires aux Comptes – CNCC
Germany	Institut der Wirtschaftsprüfer – IDW
Hungary	Magyar Könyvvizsgálói Kamara – MKVK
Ireland	Institute of Chartered Accountants in Ireland – ICAI
	Institute of Certified Public Accountants in Ireland – CPA
Italy	Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili – CNDCEC
Latvia	Latvian Association of Certified Auditors – LZRA
Lithuania	Lithuanian Chamber of Auditors – LAR
Luxembourg	Institut des Réviseurs d’Entreprises –IRE
Malta	The Malta Institute of Accountants – MIA

²⁰ Information from FEE member bodies in Bulgaria, Denmark, Estonia and Greece is not available

²¹ See Appendix 2

²² For further information about FEE member bodies see www.fee.be – “about FEE” – “Members”

The Netherlands	Koninklijk Nederlands Instituut van Registeraccountants – NIVRA
Poland	National Chamber of Statutory Auditors – KIBR
Portugal	Ordem dos Revisores Oficiais de Contas – OROC
Romania	Corpul Expertilor Contabili si Contabililor Autorizati din Romania – CECCAR
Slovakia	Slovenska Komora Auditorov - SKAU
Slovenia	Slovenski Institut za Revizijo – SIZR
Spain	Instituto de Censores Jurados de Cuentas de España – ICJCE
Sweden	FAR SRS
United Kingdom	The Association of Chartered Certified Accountants – ACCA
	Institute of Chartered Accountants in England and Wales – ICAEW
	Institute of Chartered Accountants of Scotland – ICAS
	Chartered Institute of Management Accountants – CIMA
	Chartered Institute of Public Finance and Accountancy – CIPFA

The following FEE Member Bodies in other European countries also contributed information:

Norway	Den norske Revisorforening – DnR
Switzerland	Treuhand-Kammer

Most of the above mentioned FEE Member Bodies have provided the completed questionnaires between December 2007 and July 2008²³, a number of Member Bodies have validated and updated their initial answers between January and May 2009²⁴. The survey thus generally refers to the relevant national AML regulation and guidance in force in 2008 or 2009. The information regarding Belgium, Ireland, Latvia and Poland refers to draft legislation that is designed to implement the provisions of the Third AMLD.

Appendix 1 of the FEE survey provides an overview of all answers received from FEE Member Bodies sorted by country (EU Member States and other European countries).

Appendix 2 of the FEE survey contains the FEE questionnaire that has been distributed to FEE Member Bodies in November 2007.

Appendix 3 of the FEE survey provides statistics about the number of reports of facts to the FIUs in some countries.

Appendix 4 of the FEE survey provides a list of and links to FIUs in the EU Member States mentioned in the FEE survey and a link to a list of FIUs across the world.

Appendix 5 of the FEE survey contains a glossary of terms.

²³ Ireland and Slovakia in May 2009

²⁴ Belgium, Cyprus, Czech Republic, Germany, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Spain, Sweden, Norway and the UK

3. EXECUTIVE SUMMARY

Overall, it appears that many aspects of the Third AML are imposed in a more or less similar manner across EU Member States, such as administrative requirements (client due diligence, record keeping, internal procedures, raising awareness and training of staff and supervision) and the obligation to report suspicious transactions. The data about the number of reports of facts to the FIUs in some countries as provided in Appendix 3 show however large differences across the Member States which may be a reflection on differences in law as to what has to be reported.

3.1. Persons concerned

In most countries participating in the FEE survey, the national AML law applies to anyone providing accountancy or tax services and is not restricted to members of a regulated profession. This has to be seen in the light of the respective national rules regarding qualification and market access for the provision of accountancy services.

3.2. Administrative Obligations

The Third AMLD requires national provisions to set out a number of obligations for the profession – client due diligence measures, reporting and record keeping obligations, internal procedures, raising awareness and training of staff and supervision. These obligations are not always defined in detail in the Third AMLD so that the Member States are able to interpret and implement them differently. Furthermore, national law is also frequently subject to interpretation so that “end-users” need some guidance about the implementation of the national AML measures into practice. FEE has collected information about both topics for certain selected provisions of the Third AMLD and found a number of conformities and divergences.

3.2.1. Client due diligence measures

National client due diligence provisions (measures related to client identification) in most countries require verifying the identity of all clients. Under certain circumstances, exemptions or simplification measures may be applied in few countries for certain types of potential clients (e.g. auditors), certain transactions (e.g. up to an amount of EUR 15.000) or regarding clients existing before the transposition of the Third AMLD.

Where the client is not a natural but a legal person the executives of an entity usually need to be identified. Identification of the beneficial owner (shareholders controlling 25 % plus 1 share) and of the ultimate beneficiaries of an entity, e.g. of a trust, is also required in most countries. This can be a challenge from the practical point of view because such information about a private company or trust is not always publicly available and cannot always easily be found out.

Verifying the client's identity generally has to be done on the basis of documents, data or information that is defined in the national AML provisions, for example by means of the valid official identity card of natural persons or a copy of the relevant entry in the commercial register of legal persons or partnerships.

In most countries the client due diligence measures can be determined on a risk-sensitive basis that allows focusing on certain types of clients, business relationships, products or transactions that are most vulnerable to money laundering and terrorist financing.

Some national guidance regarding client due diligence is usually available, often issued by the national professional bodies and – depending on the structure of the profession in the various countries – frequently simultaneously applicable for accountants, statutory auditors and tax advisors.

3.2.2. Record keeping

Records containing documents and information regarding client due diligence, business relationships and transactions have to be collected and kept for certain periods in most countries.

3.2.3. Internal procedures

Appropriate internal procedures of client due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication also need to be established in most countries.

3.2.4. Raising awareness and training

The practising firms usually have to take measures so that their employees are aware of the relevant national provisions and participate in special ongoing AML training programmes. The firms may devise their own training or use commercial providers.

The national professional institutes/bodies in most countries organise such specific AML training, some regularly, at least every year, others on an occasional basis.

3.2.5. Supervision

Supervision by competent authorities is required to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements that accountants and auditors need to fulfil in the context of AML legislation.

Competent authorities can for example be the national professional institutes/bodies, which is however not mandatory and only a few countries have made use of this option.

The supervision has to be carried out on a regular basis or incident related or both, but regular monitoring is more common within the countries participating in the FEE survey.

In case of infringements of the national AML provisions, the relevant competent authority can impose penalties, which are generally administrative measures and – additionally – the possibility to bring the case before a criminal court. Disciplinary sanctions are also foreseen in many countries.

3.3. Reporting obligations

Persons subject to the law on money laundering must be obliged to inform the national Financial Intelligence Unit (FIU) where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted.

This reporting requirement must apply to all external auditors, accountants and tax advisors and to all sizes of suspicious transactions. A number of Member States have made use of the possibility to provide a professional privilege exception, so that auditors, external accountants and tax advisors are not obliged to report information they receive from or obtain on any of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings.

In many countries, a person within a firm has to be nominated in order to take care of the firms reporting obligation and related AML tasks. These Money Laundering Reporting Officers (MLROs) receive internal reports, assess them and, if appropriate, file them with the competent authority. In some countries the audit partner in a registered audit firm is directly responsible for reporting suspicious facts or transactions, in others the reporting obligation applies to any professional accountant in the firm.

The national law in general provides guidance on what a “suspicion” of money laundering or terrorist financing is and what “reasonable grounds to suspect” means, e.g. transactions without obvious economic rationale. Furthermore, many national professional bodies have issued a standard or another type of guidance or explanatory paper to address the reporting obligations.

Reports usually have to be made to the appropriate national Financial Intelligence Unit (FIU). Few Member States have designated an appropriate self-regulatory body of the profession, e.g. a national professional institute, as the authority to be informed in the first instance.

In most countries, national AML law contains provisions preventing auditors, accountants and tax advisors from disclosing to the client that a suspicious transaction has been reported to the FIU (“tipping off”). In a number of countries the professional can however disclose to the client elements showing that he has reasonable grounds for suspecting money laundering, e.g. where this is done for the purpose of dissuading a client from pursuing a criminal course of conduct.

3.4. Role of the accountancy profession

Some national professional bodies expected major changes for the profession after the transposition of the Third AMLD. Such changes could be felt in particular by small practitioners and by professions that were not subject to AML regulation before, such as bookkeeping professionals. There are concerns that the changes may lead to additional administrative work regarding client due diligence, in particular where on a risk-sensitive basis, and to additional cost for increased staff supervision, for organisation of staff training and for adaptation of the AML software.

Nevertheless, a number of national professional institutes/bodies believe that the applicability of the AMLD to the accountancy profession has a real impact in the fight against money laundering. However, as mentioned above, there seem to be large differences across Member States regarding the breadth and quantity of reporting, which might have an impact on the value to society in terms of harm reduction.

4. EUROPEAN AND NATIONAL AML PROVISIONS

4.1. Development

The creation of the EU Single Market and the breaking down of barriers to trade aids legitimate business, but may also provide increased opportunities for money laundering and financial crime. Therefore, European legislation has been progressively adopted since 1991 to protect the financial system and other vulnerable professions and activities from being misused for money laundering and financing of terrorism purposes.

The relevant EU Directive on the prevention of money laundering and terrorist financing in force since December 2005 is the Third AMLD²⁵, which repealed the First and the Second AMLDs²⁶. Member States were required to bring into force the provisions necessary to comply with the Third AMLD by 15 December 2007.

Whereas the provisions of the *First* and *Second* AMLD had been implemented by all 23 EU Member States participating in the FEE survey²⁷, six of them (Belgium, Ireland, Latvia, Poland, Portugal and Spain) have not transposed the *Third* AMLD by the time where the FEE survey was carried out (December 2007 to May 2009) – four of them (Belgium, Ireland, Latvia and Poland) dispose however of a draft legislation designed to implement the provisions of the Third AMLD²⁸. This result corresponds with the findings of the European Commission that by end of March 2009 more than 25 % of the Member States have not yet implemented the Third AMLD²⁹.

Switzerland disposes of AML regulation corresponding to most of the Third AMLD requirements. The law is applicable to all persons or companies considered as “financial intermediaries”, which can insofar include auditors, accountants and tax advisors if they act as financial intermediary. Norway has transposed the provisions of the Second and Third AMLD (though not required).

Most of the national professional institutes/bodies providing the information for the FEE survey were involved and/or consulted on the impact of the transposition of the Third AMLD; they were not involved and/or consulted in Belgium, Cyprus, Spain, Luxembourg, Poland, Portugal, Romania and Switzerland³⁰.

²⁵ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

²⁶ Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering and 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

²⁷ Question 1 of the FEE questionnaire

²⁸ Question 1A of the FEE questionnaire

²⁹ See European Commission overview: Transposition – State of play as at 27/03/2009
http://ec.europa.eu/internal_market/finances/docs/actionplan/index/directive_en.pdf

³⁰ Question 1B of the FEE questionnaire

4.2. Persons concerned

Originally, the framework of rules on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing was developed with financial institutions. Subsequently, it was extended to a number of so-called vulnerable professions including the legal profession and the accountancy profession.

National provisions implementing the Third AMLD must apply to amongst others, auditors, external accountants and tax advisors acting in the exercise of their professional activities³¹. This could be interpreted as covering persons who:

- Provide accountancy or tax services and/or
- Are entitled to deliver a regulated service and/or
- Are members of a regulated body of professionals.

In this context it has to be noted that qualification and market access rules for the accountancy profession vary broadly within the Member States³². Whereas audit services generally may only be provided by auditors that are approved and registered, the provision of other accountancy services such as tax advice or bookkeeping is not necessarily regulated so that such services may be provided by persons not possessing a special qualification or title or being member of a professional body.

In most countries participating in the FEE survey, the application of national AML law is however not restricted to members of a regulated profession, except in Belgium, France and Poland³³. Apart from those countries, national AML law generally applies to anyone providing accountancy or tax services; in Luxembourg to those who are entitled to deliver a regulated service³⁴. It has to be noted that in Belgium, France and Poland, the provision of accountancy services is in general linked to being a member of a regulated body of professionals and being entitled to deliver a regulated service.

Overall, this finding has to be seen in the light of the respective national rules regarding qualification and market access for the provision of accountancy services.

4.3. Administrative Obligations

The provisions of the Third AMLD oblige Member States to ensure that money laundering and terrorist financing is prohibited and that infringements of the respective national provisions are threatened with penalties. They require national provisions to set out a number of obligations for the profession – client due diligence measures, reporting and record keeping obligations, internal procedures, raising awareness and training of staff and supervision.

³¹ Article 2 para. 1 point (3) (a) Third AMLD

³² See also FEE Survey on the Provision of Accountancy, Audit and Related Services in Europe - A Survey on Market Access Rules published in December 2005 (http://www.fee.be/publications/default.asp?library_ref=4&content_ref=539) and FEE paper on "Internal market for services and the accountancy profession: qualifications and recognition" published in November 2007 (http://www.fee.be/publications/default.asp?library_ref=4&category_ref=44&content_ref=761)

³³ Question 3 of the FEE questionnaire

³⁴ Question 2 of the FEE questionnaire

4.3.1. Client due diligence measures

4.3.1.1. Scope of client identification

According to the Third AMLD³⁵, client due diligence (measures related to client identification) shall be required in a number of cases, in particular when:

- Establishing a business relationship,
- Carrying out occasional transactions amounting to EUR 15.000 or more.

As mentioned above, the AML system was originally designed for the banking sector, so that it is not always easy to apply it to the accountancy profession; for example carrying out occasional transactions amounting to EUR 15.000 or more is a criterion that is difficult to define for the accountancy perspective. In cases where accountancy services or advice are being provided the provision might as well be interpreted in a way that a business relationship is established, so that client due diligence would be required in any relationship between accountants and their clients.

The Third AMLD requires that client due diligence measures comprise amongst others³⁶:

- Identifying the client and verifying the client's identity on the basis of documents, data or information obtained from a reliable and independent source;
- Identifying, where applicable, the beneficial owner (shareholders controlling 25 % plus 1 share) and taking measures to verify his identity;
- Conducting ongoing monitoring of the business relationship.

According to the Third AMLD, simplified client due diligence can be allowed for certain clients, such as credit or financial institutions³⁷.

National AML provisions in most countries require verifying the identity of all clients³⁸. Belgium, Czech Republic, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Slovakia, Spain and the UK have interpreted the client due diligence requirement as follows.

In the UK, clients existing before the date of transposition of the Third AMLD do not need to be subject to new client due diligence provided adequate information is already held and monitored. Similar provisions appear to exist in Belgium, Germany and Malta. Simplified due diligence measures are allowed in the UK for certain types of clients, including listed companies.

³⁵ Article 7 Third AMLD

³⁶ Article 8 Third AMLD

³⁷ Article 11 Third AMLD

³⁸ Question 13 of the FEE questionnaire

Verifying the client's identity is optional in Italy and Poland, for transactions below a value of EUR 15.000, in the Czech Republic for transactions below EUR 1.000. In Ireland, accountants, auditors and tax advisors are exempt from carrying out "know your client" checks for certain clients, for example, other accountants, auditors and tax advisors, solicitors, banks, building societies and life assurance companies, which are "designated bodies" for the purpose of Irish AML legislation. In the Netherlands, the client due diligence requirement does not apply when the accountant provides non-accountancy specific services other than audit or tax advice (e.g. seminars) and in Slovakia for certain companies such as financial institutions, listed entities and public agencies.

Special provisions related to statutory auditors in client due diligence are included in national regulation in Italy, Malta, Netherlands and Poland³⁹.

In Italy, statutory auditors are generally required to apply anti-money laundering regulation. The only exemption for client due diligence applies to the "collegio sindacale" (an independent professional supervisory board) which in Italy performs in specific circumstances the statutory audit of accounts, among other functions. They are not required to carry out client due diligence, but need to oversee on the compliance of the company with the anti-money laundering requirements.

In Malta, identification procedures do not need to be performed for certain potential clients (unless there are suspicions of money laundering involvement), e.g. where the potential client is an auditor, external accountant, or tax advisor acting in the exercise of his profession, and is subject to mandatory professional registration recognised by law and applies identification procedures similar or more onerous to those required by Maltese legislation; or where the potential client has been introduced by such an auditor, external accountant, or tax advisor and the latter gives written assurance that he has obtained evidence as to the potential client's identity. The auditor, external accountant, or tax advisor must however – due to the provisions concerning reliance – ensure that supporting identification documentation is available.

In the Netherlands, special provisions exist regarding to listed companies and governmental organisations.

In Poland, the obligation to register certain transactions does – amongst others (e.g. real estate agents, electronic money institutions, and legal advisers) – not concern competent auditors and tax advisers.

4.3.1.2. Legal persons as client

The Third AMLD does not provide any general clarification with regard to situations where the client is not a natural but a legal person and how the client identification has to be carried out in this case, for example if the executives of a legal entity need to be identified.

³⁹ Question 18 of the FEE questionnaire

National AML law in most countries participating in the FEE survey is more specific in this regard and requires the executives of an entity to be identified⁴⁰. In Poland, Portugal, UK and Norway, the executives of an entity do not however, need to be identified, neither according to national law nor following a national standard or guidance.

4.3.1.3. Beneficial owners and ultimate beneficiaries of the client

The Third AMLD introduces specific provisions relating to the beneficial owner or ultimate beneficiary of a client. It requires identifying, where applicable, the beneficial owner and taking measures to verify his identity, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer⁴¹.

Beneficial owner means the natural person(s) who ultimately own(s) or control(s) the client, which includes in case of corporate entities direct or indirect ownership or control over 25 % plus 1 share or voting right. In case of entities, which administer and distribute funds, e.g. foundations or trusts, beneficial owner generally means the future beneficiary of 25 % or more of the property⁴².

The identification of the beneficial owner is a challenge from the practical point of view because such information about a private company is usually not publicly available and cannot always easily be found especially when there are several layers of ownership between the actual client and the beneficial owners.

Identification of the beneficial owner (shareholders controlling 25 % plus 1 share) is nonetheless required by national AML law in most countries participating in the FEE survey, apart from France, Ireland, Lithuania, Poland and Portugal⁴³. In the Irish case, it is a timing issue only because the Third AMLD has not yet been transposed.

Ultimate beneficiaries of an entity (foundations or trusts) also need to be identified in most countries participating in the FEE survey, apart from Ireland, Lithuania, Portugal, Sweden and Norway⁴⁴. In the Irish case, it is a timing issue only because the Third AMLD has not yet been transposed.

4.3.1.4. Documentation

Despite the requirement of verifying the client's identity on the basis of documents, data or information, the Third AMLD does not provide a definition of these documents, data or information.

⁴⁰ Question 15 of the FEE questionnaire

⁴¹ Article 8 para. 1. (b) Third AMLD

⁴² Article 3 para. 6 Third AMLD

⁴³ Question 16 of the FEE questionnaire

⁴⁴ Question 17 of the FEE questionnaire

However, national AML provisions do generally define the documents that need to be collected from clients as supporting evidence in the identification process, apart from Belgium, Finland, Ireland, Malta, Portugal, Sweden and the UK⁴⁵. Such documents can for example be the valid official identity card of natural persons or a copy of the relevant entry in the commercial register of legal persons or partnerships.

4.3.1.5. Risk-based approach

The client due diligence requirements can be lightened by allowing a risk-based approach, as the Third AMLD provides that the extent of the client due diligence measures can be determined on a risk-sensitive basis depending on the type of client, business relationship, product or transaction⁴⁶.

A risk-based approach allows the relevant professionals and companies to focus their resources on those clients, accounts, and transactions that are most vulnerable to money laundering and terrorist financing. It requires conducting an assessment of the varying risks associated with the different types of businesses, clients, accounts, and transactions it handles⁴⁷.

In most countries participating in the FEE survey, national law generally permits professionals to apply the due diligence requirements on a risk-sensitive basis, apart from Czech Republic, France, Ireland, Malta, Portugal and Sweden⁴⁸. In the Irish case, it is a timing issue only because the Third AMLD has not yet been transposed.

The risk-based approach can be applied for the identification of executives of an entity (Cyprus, Germany, Netherlands, Spain, Slovakia and Norway), for the identification of the beneficial owner (Finland, Germany, Netherlands, Spain, Slovakia and Norway and Switzerland) and for the identification of the ultimate beneficiary of an entity where required (Finland, Germany, Netherlands, Poland, Spain, Slovakia and Norway and Switzerland)⁴⁹.

4.3.1.6. National guidance

In addition to the national law, some guidance regarding client due diligence is usually available.

National professional bodies have issued a standard, guidance or explanatory paper to address the client due diligence in many countries, like Austria, Belgium, Cyprus, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Romania, Spain, Sweden, Slovenia, the UK and in Switzerland and Norway⁵⁰.

⁴⁵ Question 14 of the FEE questionnaire

⁴⁶ Article 8 para. 2 Third AMLD

⁴⁷ For further information see page 4 and the FATF references

⁴⁸ Question 12 of the FEE questionnaire

⁴⁹ Question 15B, 16B, 17B of the FEE questionnaire

⁵⁰ Question 4B of the FEE questionnaire

In contrast, the regulators like Financial Intelligence Units did generally not issue any guidance, except from Finland, Lithuania (Government and Ministry of Interior), Poland (Ministry of Finance), Slovakia (FIU), Switzerland (Federal AML Authority) and Norway (Financial Supervisory Authority)⁵¹.

Where such paper was issued by a professional body or a regulator, it frequently provides guidance simultaneously for accountants, statutory auditors and tax advisors (Austria, Cyprus, Finland, Ireland, Italy, Malta, Netherlands, Poland, Sweden, Slovakia, the UK and Norway)⁵².

However, depending on the structure of the profession in the various countries, such guidance was issued simultaneously for accountants and statutory auditors but separately for tax advisors (Germany)⁵³ or separately for each profession (Belgium, Hungary, Latvia and Slovenia)⁵⁴. In Romania there is guidance for professional accountants, in Luxembourg one for *Reviseurs d'Entreprises* and one for *Experts Comptables*, in Portugal there is a general AML guidance issued by the national professional body for auditors. These differences are in general related to the country specific qualification and market access rules for accountants, auditors and tax advisors⁵⁵ and the resulting structures of national professional bodies and therefore FEE Member Bodies.

4.3.2. Record keeping

According to the Third AMLD, Member States shall require the profession to collect and keep documents and information, in particular regarding client due diligence and business relationships and transactions for certain periods⁵⁶.

Such record keeping obligations do apply for accountants and auditors in most countries participating in the FEE survey, apart from Spain and Portugal⁵⁷.

4.3.3. Internal procedures

According to the Third AMLD, Member States shall require that the practising firms or professionals establish adequate and appropriate policies and procedures of client due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication⁵⁸.

Apart from Finland, France, Poland, Portugal and Spain, most countries require such internal procedures from accountants and auditors⁵⁹.

⁵¹ Question 5B of the FEE questionnaire

⁵² Question 6A of the FEE questionnaire

⁵³ Question 6B of the FEE questionnaire

⁵⁴ Question 6C of the FEE questionnaire

⁵⁵ See page 8 and the FEE Survey on Market Access Rules – Provision of Accountancy, Audit and related services in Europe (http://www.fee.be/publications/default.asp?content_ref=539&library_ref=4)

⁵⁶ Article 30 to 33 Third AMLD

⁵⁷ Question 19A of the FEE questionnaire

⁵⁸ Article 34 Third AMLD

⁵⁹ Question 19D of the FEE questionnaire

4.3.4. Raising awareness and training

According to the Third AMLD, Member States shall require that practising firms take appropriate measures so that their employees are aware of the relevant national provisions and that their employees participate in special ongoing AML training programmes⁶⁰. The Third AMLD does not prescribe how these measures have to be organised, so that the firms may devise their own training or use commercial providers.

The requirements of raising awareness of staff and of training of staff apply to accountants and auditors in most countries participating in the FEE survey, apart from Finland, Lithuania, Poland, Portugal and Spain⁶¹.

Most of the national professional institutes/bodies participating in the FEE survey organise specific training on AML regulations. The institutes/bodies in a number of countries (Cyprus, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Romania, Slovenia, the UK and Switzerland) organise such training regularly at least every year, the institutes/bodies in other countries on an occasional basis (Austria, Belgium, Czech Republic, Germany, France, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Spain, Slovakia and Sweden)⁶².

4.3.5. Supervision

According to the Third AMLD, Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements that accountants and auditors need to fulfil in the context of AML legislation. Member States shall ensure that the competent authorities have adequate powers and resources⁶³.

Competent authorities to carry out the supervision task can for example be the national professional institutes/bodies, which is however not mandatory. Taking into account that Member States shall ensure that the competent authorities shall have adequate powers and resources to perform their functions, they may prefer allocating the task to other – governmental – authorities.

⁶⁰ Article 35 Third AMLD

⁶¹ Question 19B and 19C of the FEE questionnaire

⁶² Question 6 of the FEE questionnaire

⁶³ Article 37 Third AMLD

Indeed, in most countries, national authorities other than the national professional institutes/bodies monitor the requirements that accountants and auditors need to fulfil in the context of AML legislation (Czech Republic, Finland, France, Germany, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovakia, Spain, Sweden and Switzerland and Norway). National professional institutes/bodies monitor these requirements in few countries alone (Belgium, Cyprus, Hungary, Luxembourg, Slovenia and the UK) and in some countries in addition to other national authorities (Czech Republic, Italy, Latvia, Luxembourg, Romania and Norway)⁶⁴. The Irish legislation to transpose the Third AMLD will contain provisions that the professional bodies will be the monitoring bodies. Currently in Ireland, professional bodies are obliged to report if they discover that a member firm has inadequate AML procedures, but there is no obligation on the professional bodies to actively monitor.

The Third AMLD requires effective monitoring, but does not prescribe whether the supervision has to be carried out on a regular basis or incident related or both.

In the countries participating in the FEE survey, regular monitoring is more common (Austria, Belgium, Cyprus, Germany, Hungary, Italy, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovenia and Switzerland and Norway) than incident-related monitoring, which is however usually not excluded even if regular monitoring is foreseen (Austria, Czech Republic, Spain, Finland, Lithuania, Romania, Slovakia and Sweden)⁶⁵.

Infringements of the national AML provisions have to be threatened with penalties⁶⁶. Such penalties can derive from national criminal law that usually requires bringing a case before the national criminal court. Further possible sanctions can be of administrative or disciplinary nature.

Where the national professional institute is the monitoring body, it can mainly impose disciplinary sanctions (Austria, Belgium, Czech Republic, Hungary, Italy, Lithuania, Latvia, Luxembourg, Romania, Slovenia, Slovakia, UK and Switzerland). In some countries, it can (additionally) impose administrative measures (Belgium, Czech Republic, Cyprus, Hungary, Romania and Slovenia) and bring the case before a criminal court (Czech Republic)⁶⁷.

Where the monitoring body is an authority separate from the national professional institute, it may generally impose administrative measures (Austria, Germany, Spain, Finland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Slovakia and Switzerland and Norway) and additionally bring the case before a criminal court (apart from Austria, Germany, Slovenia and Switzerland). Disciplinary sanctions by such authorities are possible in Austria, Finland, France, Germany, Latvia, Malta, Romania, Sweden, Slovakia and Switzerland and Norway⁶⁸.

⁶⁴ Question 29A and 29B of the FEE questionnaire

⁶⁵ Question 29C and 29D of the FEE questionnaire

⁶⁶ Article 39 of the Third AMLD

⁶⁷ Question 31 of the FEE questionnaire

⁶⁸ Question 30 of the FEE questionnaire

Data indicating the number of sanctions that have been imposed are rarely available at the national institutes/bodies participating in the FEE survey. It appears that in Lithuania the administrative sanctions have decreased from over 800 in 2003 to less than 300 in 2006 and criminal court cases remained at an average of nearly 200 during these years. The national professional institute of Cyprus provided the information that no administrative sanctions have been imposed in 2005 and 2006, and the national professional institute of Italy indicated 24 sanctions, applied generally with regard to all the addressee of AML provisions, including financial institutions⁶⁹.

4.4. Reporting Obligations

According to the provisions of the Third AMLD, the institutions and persons respectively their directors and employees shall be obliged to inform the national Financial Intelligence Unit (FIU) where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted⁷⁰.

4.4.1. Reporting persons

The requirement to report suspicious transactions does in general apply to all representatives of the profession, that is auditors, external accountants and tax advisors in all countries participating in the FEE survey⁷¹.

The Third AMLD does not specify whether a person within a firm has to be nominated in order to take care for the reporting obligation and related AML tasks. Therefore the concept of Money Laundering Reporting Officers (MLROs) who receive internal reports, assess them and, if appropriate, file them with the competent authority, does not derive from EU legislation.

However, many countries have introduced such an MLRO concept so that the reporting obligation has to be carried out by one or several dedicated person(s) within the firm (Cyprus, Czech Republic, Hungary, Italy, Lithuania, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia and the UK)⁷².

In some countries the audit partner in a registered audit firm is directly responsible for reporting suspicious facts or transactions (France, Germany, Italy, Luxembourg, Malta, Netherlands, Poland and Norway), in Luxembourg, Malta and Poland in addition to the MLRO. Other countries did not introduce specific requirements regarding the responsible persons (Austria, Germany, Portugal, Spain, Sweden and Switzerland), for example because the reporting obligation applies to the statutory auditor, who signs the audit report (France); to any professional accountant who is member of a regulated body (Germany); to any person operating in an audit firm (Finland); to every certified auditor within a firm (Latvia); to the auditor who manages the transaction (Italy) or to each auditor performing his profession (Poland) or because the company is responsible (Spain)⁷³.

⁶⁹ Question 30D and 31D of the FEE questionnaire

⁷⁰ Article 22 Third AMLD

⁷¹ Question 20 of the FEE questionnaire

⁷² Question 23 of the FEE questionnaire

⁷³ Question 24 of the FEE questionnaire

4.4.2. Transactions to be reported

The Third AMLD does not include any exemptions from the reporting obligation that are related to the size of suspicious transactions and in most countries the reporting obligation does in general apply for all sizes of suspicious transactions. Only in some countries such as Czech Republic, Netherlands, Portugal and Spain is the reporting obligation linked to monetary limits for certain transactions, e.g. exceeding EUR 1.000 (Czech Republic) or EUR 15.000 (Portugal), exceeding certain thresholds depending on the type of transaction (Spain) or cash transactions exceeding EUR 15.000 unless subjective indicators arise (Netherlands)⁷⁴.

4.4.3. Grounds for reporting

Although the relevant institutions and persons must be obliged to inform the national FIU where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, the Third AMLD does not provide a definition of what a “suspicion” of money laundering or terrorist financing is or what “reasonable grounds to suspect” are.

Generally grounds for reporting would include both suspicious situations, such as business structures or management profiles which have no legitimate economic rationale and suspicious transactions, such as the misappropriation of funds, false invoicing or company purchase of goods unrelated to the company's business⁷⁵.

In many countries, the national law provides both guidance as to define what a “suspicion” of money laundering or terrorist financing is and what “reasonable grounds to suspect” means (Belgium, Cyprus, Czech Republic, Italy, Luxembourg, Poland, Romania, Slovakia, Slovenia, Norway and Switzerland)⁷⁶.

Furthermore, a number of national professional bodies have issued a standard or another type of guidance or explanatory paper to address the reporting obligations (Cyprus, Czech Republic, Germany, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Romania, Sweden, Slovenia, Spain, UK, Norway and Switzerland)⁷⁷.

Many of these professional standards also provide guidance as to define both what a “suspicion” of money laundering or terrorist financing is and what “reasonable grounds to suspect” means (Cyprus, Czech Republic, Hungary, Ireland, Luxembourg, Netherlands, Romania, Sweden, Slovenia, UK and Switzerland)⁷⁸. A reasonable ground to suspect can for example be that a client does a transfer of property without obvious economical reason.

⁷⁴ Question 22 of the FEE questionnaire

⁷⁵ See FATF Risk-Based Approach Guidance for accountants dated 17 June 2008, <http://www.fatf-gafi.org/dataoecd/19/40/41091859.pdf>

⁷⁶ Questions 8 and 10 of the FEE questionnaire

⁷⁷ Question 4A of the FEE questionnaire

⁷⁸ Question 9 of the FEE questionnaire

4.4.4. Professional privilege

Member States are not obliged to apply the reporting requirement to auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings⁷⁹.

A number of Member States made use of the possibility to provide such a professional privilege and exempt auditors and/or external accountants and/or tax advisors from the reporting obligation in certain cases (related to judicial proceedings)⁸⁰:

- For both external accountants and statutory auditors and tax advisors: Austria, Italy, Ireland, Malta, Netherlands and UK;
- Only for statutory auditors and tax advisors: Czech Republic, Germany and Poland;
- Only for external accountants: Romania.

The respective exemptions generally refer to work related to judicial proceedings and apply to members of professional bodies.

4.4.5. Competent authority

In general, the appropriate national Financial Intelligence Unit (FIU) has to be informed about suspicious transactions. Member States may however designate an appropriate self-regulatory body of the profession as the authority to be informed in the first instance in place of the FIU provided that the self-regulatory body forwards the information to the FIU promptly and unfiltered⁸¹.

In most countries participating in the FEE survey, accountants, tax advisors and auditors have to report suspicious facts or transactions directly to the FIU⁸². In Germany, the report has to be made to the professional body (chamber) in a first instance, which is then obliged to forward the report promptly and unfiltered to the FIU. In the Czech Republic, such procedure applies to tax advisors and auditors and in Portugal to auditors. In Italy, accountants, tax advisors and auditors can choose between a report to the FIU and a report to the professional body.

4.4.6. Disclosure (“tipping off”)

According to the Third AMLD, the professional may not disclose to the client or to third persons the fact that information has been transmitted to the FIU or the appropriate self-regulatory body or that a money laundering or terrorist financing investigation is being or may be carried out⁸³.

⁷⁹ Article 23 para. 2 Third AMLD

⁸⁰ Question 21 of the FEE questionnaire

⁸¹ Article 23 para. 1 Third AMLD

⁸² Question 25 of the FEE questionnaire

⁸³ Article 28 Third AMLD



In most countries, national AML law contains provisions preventing auditors, accountants and tax advisors from disclosing to the client that a suspicious transaction has been reported to the FIU (“tipping off”) but not in Poland, Spain, Czech Republic (for tax advisors) and Romania (for auditors)⁸⁴.

In a number of countries (Finland, Germany, Ireland, Lithuania, Poland, Spain and Sweden; Czech Republic for accountants) the professional can however disclose to the client elements showing that he has reasonable grounds for suspecting money laundering⁸⁵. Such disclosure can be required in order to prevent or detect crime. The UK and Italy allow disclosure strictly for the purpose of dissuading a client from pursuing a criminal course of conduct. Irish law prevents a person who, knowing or suspecting that such a report has been made, from making any disclosure which is likely to prejudice an investigation arising from a money laundering or terrorist financing report.

Regardless whether disclosure is prohibited or not, it does not necessarily prevent the professional to further investigate the nature of the transactions for the purpose of carrying out his duty as accountant or auditor. In particular in audit relationships, the continuation of work may then require discussion with client senior management of matters relating to suspicions formed.

⁸⁴ Question 27B and 28B of the FEE questionnaire

⁸⁵ Question 27A and 28A of the FEE questionnaire

5. ROLE OF THE ACCOUNTANCY PROFESSION

Some national professional bodies participating in the FEE survey expected major changes for the profession after the transposition of the Third AMLD, namely in the Czech Republic, in France, Germany, Hungary, Italy, Malta, Netherlands, Poland and Slovenia⁸⁶.

Such changes could be felt in particular by small practitioners and by professions that were not subject to AML regulation before, such as bookkeeping professionals. There are concerns that the changes may lead to additional administrative work regarding client due diligence, in particular where on a risk-sensitive basis, and to additional cost for an increase of supervision staff, change of the continuous professional development programs and organisation of training programs for employees.

Nevertheless, a number of national professional institutes/bodies believe that the applicability of the AMLD to the accountancy profession has a real impact in the fight against money laundering (Belgium, Cyprus, Czech Republic, Germany, Finland, Hungary, Ireland, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Poland, Romania, Spain, UK and Norway)⁸⁷.

Information about the effectiveness of the system is in some countries available from the annual reports of the national FIUs (links to national FIUs see Appendix 4).

Comments from the national institutes/bodies participating in the FEE survey regarding the most effective role for the accountancy profession in the fight against money laundering were:

- Cyprus: Full compliance with the Directive on money laundering issued by ICPAC.
- France: It seems very difficult, at this stage, to provide a “yes” or a “no” response. We believe that for the future, the accountancy profession could play a significant role.
- Germany: The current legal regulations are sufficient.
- Hungary: Their role in the fight against money laundering: data of CDD measures; support criminal investigations with information on the person that might be involved in the crime. Necessary information for the profession: typologies originate from prosecutions and convictions; more guidance.
- Ireland: The accounting profession recognises its role in assisting the authorities in preventing and detecting money laundering and terrorist financing offences. However, it is important that the authorities recognise that accountants are not police officers and that a balance needs to be found such that the AML regime does not become overly burdensome and detrimental to the normal conduct of their businesses.
- Italy: Client due diligence is very important in order to track crimes; the reporting obligation, indeed, could be removed in favour of a different provision: suspicious transactions can be substituted for by the declaration of the client of the money’s source.

⁸⁶ Question 1C of the FEE questionnaire
⁸⁷ Question 33A of the FEE questionnaire



- Latvia: Professional accountants should effectively adopt and follow the requirements of the AML law in order to fight against money laundering.
- Netherlands: Reporting obligation only based on subjective indicators including oversight and protection against liability claims.
- Romania: Observing the spirit and the substance of the legislation on the prevention of money laundering and terrorist financing; concern for the organisational culture; finding means of stimulating/rewarding reporting persons; fighting against negative publicity by other professional categories (lawyers etc.); professional and academic education.
- Slovakia: Little impact of the applicability of the anti-money laundering directive to the accountancy profession in the fight against money laundering. The legislation appears to have impact in case the incidents of money laundering are investigated and in law enforcement.

APPENDIX 1: IMPLEMENTATION AND INFORMATION OVERVIEW

Table: Overview of answers to the FEE questionnaire received from FEE Member Bodies in Europe sorted by country (EU Member States and other European countries)

Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
1	Is the Directive 91/308/EEC on the prevention of money laundering as amended by Directive 2001/97/EC fully implemented on a national level in your country?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
1A	Is the third anti money laundering Directive (2005/60/EC) already transposed in your country?	Y	D	Y	Y	Y	N	Y	Y	Y	D	Y	Y	D	Y	Y	Y	D	N	Y	Y	Y	Y	Y	N	Y
1B	Has your Institute been involved and/or consulted on the impact of the transposition of the third anti money laundering Directive 2005/60/EC)?	Y	N	N	Y	Y	N	/	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	N	Y



Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
1C	Do you expect major changes for the profession after the transposition of the third money laundering Directive?	N	N	N	Y	Y	N	N	Y	Y	N	Y	N	N	N	Y	Y	Y	N	N	N	Y	N	/	N	N
	<i>Questionnaire includes comments = Y</i>	Y	Y	Y	Y	Y				Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y
2	The Directive covers auditors, external accountants and tax advisors. Does your national law apply:																									
2A	• To anyone providing accountancy or tax services	Y	N	Y	Y		Y	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y
2B	• Only to those who are entitled to deliver a regulated service	N	Y	N	N		N	N	Y	N	N	N	Y	Y	N	N	Y	N	N	N	N	/	/	N	N	N
2C	• Only to the members of a regulated body of professionals	N	Y	N	Y	Y	N	N	Y	N	N	N	N	N	N	N	Y	N	N	N	N	/	/	N	N	N



Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
3	When accounting or taxation services are provided by a person who is not a member of a regulated profession, does the national legislation on prevention of money laundering apply?	/	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
4	Did your national professional body issue a standard or another type of guidance or explanatory paper to address:																									
4A	• The reporting obligations?	N	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y
4B	• The customer due diligence?	Y	Y	Y	N	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y
5	If the answer to question 4 is negative, was such standard or guidance issued by a regulator (for example the FIU) concerning:																									
5A	• The reporting obligations?	N	N	/	N	/	N	Y	N	/		/	Y	/	/	/	/	Y	N	/	/	/	Y	/	Y	Y
5B	• The customer due diligence?	N	N	/	N	N	N	Y	N	/		/	Y	/	/	/	/	Y	N	/	/	/	Y	/	Y	Y



Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
5C	<i>Please indicate which body issued this document (Questionnaire includes comments = Y):</i>	Y						Y					Y					Y					Y		Y	Y
6	If a standard has been issued by a professional body or a regulator, does it provide guidance:																									
6A	• Simultaneously for accountants, statutory auditors and tax advisors	Y	N	Y	N	N	N	Y	N	N	Y	Y	N	N	N	Y	Y	Y	N	/	Y	/	Y	Y	/	Y
6B	• Simultaneously for accountants, statutory auditors but separately for tax advisors	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	/	/	/	/	N
6C	• Separately for each profession	N	Y	N	N	N	N	N	N	Y	N	N	N	Y	Y	N	N	N	N	N	N	Y	/	/	/	N
6D	• Others (please specify) (Questionnaire includes comments = Y):				Y									Y					Y						Y	



Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
7	Does your institute organise specific training on anti-money laundering regulations?																									
7A	• Regularly (at least every year)	N	N	Y	N	N	N	N	N	Y	Y	Y	N	Y	Y	N	Y	N	N	Y	N	Y	/	Y	Y	-/
7B	• Occasionally	Y	Y	N	Y	Y	Y	Y	Y	/		N	Y	N	Y	Y	Y	Y	Y	Y	Y	/	Y	/	N	Y
8	Did the law or the regulators in your country provide guidance as to define what a suspicion of money laundering/terrorist financing is?	N	Y	Y	Y	N	N	N	N	N	N	Y	N	N	Y	N	N	Y	N	Y	N	Y	Y	N	Y	Y
9	Did professional standards in your country provide guidance as to define what a suspicion of money laundering/terrorist financing is?	N	N	Y	Y	N	N	N	N	Y	Y	N	N	N	Y	N	Y	N	N	Y	Y	Y	N	Y	Y	N
10	Did the law or the regulators in your country provide guidance as to explain what "reasonable grounds to suspect" means?	N	Y	Y	Y	N	N	N	N	N	N	Y	N	N	N	N	N	Y	N	Y	N	N	Y	N	Y	Y



Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
11	Did professional standards in your country provide guidance as to explain what "reasonable grounds to suspect" means?	N	N	Y	Y	N	N	N	N	Y	Y	N	N	N	Y	N	Y	N	N	Y	Y	N	N	Y	Y	N
12	Does the regulation in your country permit professionals to apply due diligence requirement on a risk-sensitive basis?	Y	Y	Y	N	Y	Y	Y	N	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y
13	Does the regulation in your country require to verify the identity of all customers?	Y	N	Y	N	N	N	N	Y	Y	N	N	Y	Y	N	N	N	N	Y	Y	Y	Y	N	N	Y	Y
13A	<i>If no, please mention exceptions (Questionnaire includes comments = Y)</i>		Y		Y	Y	Y	Y			Y	Y			Y	Y	Y	Y					Y	Y		
14	Does the regulation define the documents that need to be collected from clients as "supporting evidence" in the identification process?	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	N	Y	Y	N	Y	Y



Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
15	Are executives of an entity required to be identified:																									
15A	• by law	Y	Y	/	Y	/	/	/	Y	Y		Y	Y	Y	Y	Y	Y	/	/	Y	Y	Y	/	/	Y	/
15B	• by law on a risk based approach	/	/	Y	/	Y	Y	/	/	/		/	/	/		/	Y	/	/	/	/	/	Y	/	/	Y
15C	• by guidance	/	/	/	Y	/	/	/	/	Y		/	/	Y	Y	Y	Y	/	/	/	Y	/	/	/	/	/
15D	• by guidance on a risk based approach	/	/	/	/	/	/	/	/	/	Y	/	/	/		/	Y	/	/	/	/	/	/	/	/	/
16	Are shareholders controlling 25% + of an entity required to be identified																									
16A	• by law	Y	Y	Y	Y	/	/	Y	/	Y		Y	/	Y	Y	Y	Y	/	/	Y	Y	Y	/	Y	/	Y
16B	• by law on a risk based approach	/	/	/	/	Y	Y	Y	/	/		/	/	/	/	/	Y	/	/	/	/	/	Y	/	Y	Y
16C	• by guidance	/	/	/	/	/	/	/	/	Y		/	/	Y	Y	Y	Y	/	/	/	/	/	/	/	/	/
16D	• by guidance on a risk based approach	/	/	/	/	/	/	/	/	/		/	/	/	/	/	Y	/	/	/	/	/	/	/	/	/
17	Are ultimate beneficiaries of an entity required to be identified																									
17A	• by law	Y	Y	Y	Y	/	/	Y	Y	Y		Y	/	Y	Y	Y	Y	/	/	Y	/	Y	/	/	/	/
17B	• by law on a risk based approach	/	/	/	/	Y	Y	Y	/	/		/	/	/	/	/	Y	Y	/	/	/	/	Y	/	Y	Y
17C	• by guidance	/	/	/	/	/	/	/	/	Y		/	/	Y	Y	Y	Y	/	/	/	/	/	/	/	/	/
17D	• by guidance on a risk based approach	/	/	/	/	/	/	/	/	/		/	/	/	Y	/	Y	/	/	/	/	/	/	Y	/	/



Q.	Question	EU Member States																								Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO	
18	Does your national regulation provide for exemptions for statutory auditors in customer due diligence?	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	Y	Y	Y	N	N	N	N	N	N	N	N	
18A	<i>If yes, please explain (Questionnaire includes comments = Y):</i>										Y				Y	Y	Y										
19	Do following requirements of the Directive also apply to accountants and auditors (Questionnaire includes comments = Y):					Y					Y																
19A	• Record-keeping procedures	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y		
19B	• Raising awareness of staff	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y		
19C	• Training of staff	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y		
19D	• Internal reporting procedure	Y	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y		

Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
20	The Directive requires suspicious transactions to be reported to the competent authority (Financial Intelligence Unit - FIU). Does this requirement apply to auditors, external accountants and tax advisors	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20A	<i>If no, please explain (Questionnaire includes comments = Y):</i>					Y																			Y	
21	Does your national regulation provide a professional privilege exempting from the reporting obligation																									
21A	• External accountants	Y	N	N	N	N	N	N	N	N	Y	Y	N	N	N	Y	Y	N	N	Y	N	N	N	Y	N	N
21B	• Statutory auditors	Y	N	N	Y	Y	N	N	N	N	N	Y	N	N	N	Y	Y	Y	N	N	N	N	N	Y	N	N
21C	• Tax advisors	Y	N	N	Y	Y	N	N	N	N	Y	Y	N	N	N	Y	Y	Y	N	N	N	N	N	Y	N	N



Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
21D	<i>If yes please explain what are the grounds, if any, for exemption from reporting when information is received in privileged circumstances (Questionnaire includes comments = Y):</i>	Y			Y	Y					Y	Y			Y	Y	Y	Y		Y				Y		
22	Does the reporting obligation apply to all size of suspicious transactions?	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y
22A	<i>If no, please explain (Questionnaire includes comments = Y):</i>				Y		Y										Y		Y							
23	Is it required by the regulation in your country that all reporting obligations carried out by (a) dedicated person(s) within the firm?	N	N	Y	Y	N	N	N	N	Y	N	Y	Y	Y	Y	Y	N	Y	N	Y	N	Y	Y	Y	N	N
24	In a registered audit firm, is the audit partner directly responsible for reporting suspicious facts or transactions?	N	/	N	N	Y	N	/	Y	N	N	Y	N	N	Y	Y	Y	Y	N	/	N	N	N	N	N	Y



Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
24A	<i>If yes, please explain how answer combines with the answer to questions 23 (Questionnaire includes comments = Y):</i>		Y			Y			Y			Y			Y	Y	Y	Y								
25	Concerning <i>accountants and tax advisors</i> , are suspicious facts or transactions reported																									
25A	• Directly to the Financial Intelligence Unit	Y	Y	Y	Y/N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	/	Y	Y	Y	Y	Y	Y	Y
25B	• To the professional body in the first instance	N	N	N	N/Y	Y	N	N	N	N	N	N	N	/	N	N	N	N	/	N	N	N	N	N	N	N
26	Concerning <i>auditors</i> , are suspicious facts or transactions reported																									
26A	• Directly to the Financial Intelligence Unit	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
26B	• To the professional body in the first instance	N	N	N	Y	Y	N	N	N	N	N	Y	N	/	N	N	N	N	Y	Y	N	N	N	N	N	N



Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
27	Does your national legislation contain a provision preventing accountants or tax advisors to disclose to the client																									
27A	• Elements showing that he has reasonable grounds for suspecting money laundering.	Y	Y	Y	N/Y	N	N	N	Y	Y	N	Y	N	/	Y	Y	Y	N	Y	Y	N	/	Y	Y	/	Y
27B	• That the fact or transaction has been reported to the FIU ("tipping off")	Y	Y	Y	N/Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	/	Y	Y	/	Y
28	Does your national legislation contain a provision preventing statutory auditors to disclose to the client																									
28A	• Elements showing that he has reasonable grounds for suspecting money laundering	Y	Y	Y	Y	N	N	N	Y	Y	N	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	/	Y
28B	• That the fact or transaction has been reported to the FIU ("tipping off")	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	/	Y

Q.	Question	EU Member States																						Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
29	Are the requirements that accountants and auditors need to fulfill in the context of anti-money laundering legislation monitored																									
29A	• By the Institute		Y	Y	Y					Y	N	Y		Y	Y	N				Y		Y		Y		Y
29B	• By authorities				Y	Y	Y		Y			Y	Y	Y	Y	Y	Y	Y		Y	Y		Y		Y	Y
29C	• Regularly	Y	Y	Y		Y				Y		Y	Y	Y	Y	Y	Y	Y				Y			Y	Y
29D	• Incident-related monitoring	Y			Y		Y	Y				Y	Y		N	N				Y	Y		Y			Y
30	When the monitoring body is an authority separate from the Institute, what sanctions/penalties can be imposed?																									
30A	• Administrative sanctions/measures	Y	/	/	/	Y	Y	Y	/	/	/	Y	/	Y	Y	Y	Y	Y	/	Y	/	Y	Y	/	Y	Y
30B	• Disciplinary sanctions	Y	/	/	/	Y	/	Y	Y	/		/	/	Y	/	Y	/	/	/	Y	Y	/	Y	/	Y	Y
30C	• Bring the case before a criminal court		/	/	/	/	Y	Y	/	/		Y	/	Y	Y	Y	Y	Y	/	Y	Y	/	Y	/	/	Y

Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
30D	<i>If available, please indicate how many sanctions have been imposed; if applicable, indicate that the reporting system was not in place for the year (Questionnaire includes figures =Y)</i>											Y	Y													
31	When the monitoring body is the professional body what sanctions/penalties can be imposed?																									
31A	• Administrative sanctions/measures		Y	Y	Y	/	/	/	N/A	Y	N/A	/	/	/	/	/	/	/	/	Y	/	Y	Y	/	/	/
31B	• Disciplinary sanctions	Y	Y	/	Y	/	/	/	N/A	Y		Y	Y	Y	Y	/	/	/	/	Y	/	Y	Y	Y	Y	/
31C	• Bring the case before a criminal court		/	/	Y	/	/	/	N/A	/		/	/	/	/	/	/	/	/	/	/	/	/	/	/	/
31D	<i>If available, please indicate how many sanctions have been imposed; if applicable, indicate that the reporting system was not in place for the year (Questionnaire includes figures =Y)</i>			Y																						



Q.	Question	EU Member States																							Other	
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO
32	<i>How many reports of facts to the FIU have been sent by professional accountants (if available)? (Questionnaire includes figures =Y)</i>	Y	Y	Y		Y	Y	Y			Y	Y		Y	Y		Y			Y		/	N/A	Y		Y
33A	<i>Do you believe that the applicability of the AMLD to the accountancy profession has a real impact in the fight against money laundering?</i>		Y	Y	Y	Y	Y	Y		Y	Y	N	Y	Y	Y	Y	Y	Y		Y		N	N	Y		Y
33B	<i>Were research studies conducted in your country concluding (or not) to the effectiveness of the system? If yes, please explain briefly</i>		Y			Y	Y				N	Y	/	Y			Y						N	Y		N



Q.	Question	EU Member States																							Other		
		AT	BE	CY	CZ	DE	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	CH	NO	
33C	<p><i>What do you think would be the most effective role for the accountancy profession in the fight against money laundering? Please add your comments (Questionnaire includes comments = Y):</i></p>			Y		Y					Y	Y		Y			Y			Y			Y				
	<p><i>Please, add any electronic document relevant to the implementation of the European directives on the prevention of money laundering and terrorist financing in your country.</i></p>					Y																					

Legend:	
Y	yes
N	no
D	draft
N/A	not applicable



APPENDIX 2: FEE QUESTIONNAIRE

FEE questionnaire distributed to FEE Member Bodies in November 2007:

IMPLEMENTATION OF THE EUROPEAN DIRECTIVES ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING SURVEY

COUNTRY:
CONTACT PERSON:
DATE COMPLETED:
EMAIL ADDRESS:
PHONE NUMBER:

<p>GENERAL</p> <p>Q. 1: Is the Directive 91/308/EEC⁸⁸ on the prevention of money laundering as amended by Directive 2001/97/EC⁸⁹ fully implemented on a national level in your country? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Q.1A: Is the third anti money laundering Directive (2005/60/EC)⁹⁰ already transposed in your country? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Q.1B: Has your Institute been involved and/or consulted on the impact of the transposition of the third anti money laundering Directive (2005/60/EC)? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Q.1C: Do you expect major changes for the profession after the transposition of the third money laundering Directive? Yes <input type="checkbox"/> No <input type="checkbox"/> <i>Please add your comments:</i></p>
<p>INCLUSION OF PROFESSIONALS</p> <p>Q. 2: The Directive covers auditors, external accountants and tax advisors. Does your national law applies : To anyone providing accountancy or tax services Yes <input type="checkbox"/> No <input type="checkbox"/> Only to those who are entitled to deliver a regulated(*) service Yes <input type="checkbox"/> No <input type="checkbox"/> Only to the members of a regulated (*) body of professionals Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(*) Regulated means that the service or the exercise of the profession is subject by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications.</p> <p>Q. 3: When accounting or taxation services are provided by a person who is not a member of a regulated profession, does the national legislation on prevention of money laundering apply? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>PROFESSIONAL STANDARDS</p> <p>Q. 4: Did your national professional body issue a standard or another type of guidance or explanatory paper to address The reporting obligations? Yes <input type="checkbox"/> No <input type="checkbox"/> The customer due diligence? Yes <input type="checkbox"/> No <input type="checkbox"/></p>

⁸⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0308:EN:HTML>

⁸⁹ http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/L_344/L_34420011228en00760081.pdf

⁹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0060:EN:NOT>



<p>Q. 5: If the answer to question 4 is negative, was such standard or guidance issued by a regulator (for example the FIU⁹¹) concerning: The reporting obligations? Yes <input type="checkbox"/> No <input type="checkbox"/> The customer due diligence? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Please indicate which body issued this document:</p>
<p>Q. 6: If a standard has been issued by a professional body or a regulator, does it provide guidance Simultaneously for accountants, statutory auditors and tax advisors Yes <input type="checkbox"/> No <input type="checkbox"/> Simultaneously for accountants, statutory auditors but separately for tax advisors Yes <input type="checkbox"/> No <input type="checkbox"/> Separately for each profession Yes <input type="checkbox"/> No <input type="checkbox"/> Others (please specify):</p>
<p>Q. 7: Does your Institute organise specific training on anti-money laundering regulations Regularly (at least every year) Yes <input type="checkbox"/> No <input type="checkbox"/> Occasionally Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Definitions of Suspicion</p> <p>Q. 8: Did the law or the regulators in your country provide guidance as to define what a suspicion of money laundering/ terrorist financing is? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q.9: Did professional standards in your country provide guidance as to define what a suspicion of money laundering/ terrorist financing is? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q. 10: Did the law or the regulators in your country provide guidance as to explain what "reasonable grounds to suspect" means? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q.11: Did professional standards in your country provide guidance as to explain what "reasonable grounds to suspect" means? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Customer Due Diligence</p> <p>Q. 12: DOES THE REGULATION IN YOUR COUNTRY PERMIT PROFESSIONALS TO APPLY DUE DILIGENCE REQUIREMENT ON A RISK-SENSITIVE BASIS? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q. 13: DOES THE REGULATION IN YOUR COUNTRY REQUIRE TO VERIFY THE IDENTITY OF ALL CUSTOMERS YES <input type="checkbox"/> NO <input type="checkbox"/> <i>If no, please mention exceptions:</i></p>
<p>Q. 14: Does the regulation define the documents that need to be collected from clients as "supporting evidence" in the identification process? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q. 15: ARE EXECUTIVES OF AN ENTITY REQUIRED TO BE IDENTIFIED</p> <ul style="list-style-type: none"> - BY LAW YES <input type="checkbox"/> - by law on a risk based approach Yes <input type="checkbox"/> - by guidance Yes <input type="checkbox"/> - by guidance on a risk based approach Yes <input type="checkbox"/>

⁹¹ Financial Intelligence Unit defined by the Directive as the authority responsible for anti-money laundering activities to which suspicious facts or transactions must be reported.



<p>Q. 16: ARE SHAREHOLDERS CONTROLLING 25% + OF AN ENTITY REQUIRED TO BE IDENTIFIED</p> <p>- BY LAW YES <input type="checkbox"/></p> <p>- by law on a risk based approach Yes <input type="checkbox"/></p> <p>- by guidance Yes <input type="checkbox"/></p> <p>- by guidance on a risk based approach Yes <input type="checkbox"/></p>
<p>Q. 17: ARE ULTIMATE BENEFICIARIES OF AN ENTITY REQUIRED TO BE IDENTIFIED</p> <p>- BY LAW YES <input type="checkbox"/></p> <p>- by law on a risk based approach Yes <input type="checkbox"/></p> <p>- by guidance Yes <input type="checkbox"/></p> <p>- by guidance on a risk based approach Yes <input type="checkbox"/></p>
<p>Q. 18: DOES YOUR NATIONAL REGULATION PROVIDE FOR EXEMPTIONS FOR STATUTORY AUDITORS IN CUSTOMER DUE DILIGENCE?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p><i>If yes, please explain:</i></p>
<p>Q. 19: DO FOLLOWING REQUIREMENTS OF THE DIRECTIVE ALSO APPLY TO ACCOUNTANTS AND AUDITORS:</p> <p>Record-keeping procedures Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Raising awareness of staff Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Training of staff Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Internal reporting procedure Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Reporting Obligations</p> <p>Q. 20: The Directive requires suspicious transactions to be reported to the competent authority (Financial Intelligence Unit - FIU). Does this requirement apply to auditors, external accountants and tax advisors</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If no, please explain:</i></p>
<p>Q. 21: DOES YOUR NATIONAL REGULATION PROVIDE A PROFESSIONAL PRIVILEGE EXEMPTING FROM THE REPORTING OBLIGATION</p> <p>EXTERNAL ACCOUNTANTS YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>STATUTORY AUDITORS YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>TAX ADVISORS YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p><i>IF YES PLEASE EXPLAIN WHAT ARE THE GROUNDS, IF ANY, FOR EXEMPTION FROM REPORTING WHEN INFORMATION IS RECEIVED IN PRIVILEGED CIRCUMSTANCES:</i></p>
<p>Q. 22: Does the reporting obligation apply to all size of suspicious transactions?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>IF NO, PLEASE EXPLAIN:</i></p>
<p>Q. 23: IS IT REQUIRED BY THE REGULATION IN YOUR COUNTRY THAT ALL REPORTING OBLIGATIONS CARRIED OUT BY (A) DEDICATED PERSON(S) WITHIN THE FIRM?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>
<p>Q. 24: IN A REGISTERED AUDIT FIRM, IS THE AUDIT PARTNER DIRECTLY RESPONSIBLE FOR REPORTING SUSPICIOUS FACTS OR TRANSACTIONS?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p><i>If yes, please explain how answer combine with the answer to questions 23:</i></p>
<p>Q. 25: CONCERNING ACCOUNTANTS AND TAX ADVISORS, ARE SUSPICIOUS FACTS OR TRANSACTIONS REPORTED</p> <p>Directly to the Financial Intelligence Unit Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>To the professional body in the first instance Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q. 26: CONCERNING AUDITORS, ARE SUSPICIOUS FACTS OR TRANSACTIONS REPORTED</p> <p>Directly to the Financial Intelligence Unit Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>To the professional body in the first instance Yes <input type="checkbox"/> No <input type="checkbox"/></p>



Q. 27: DOES YOUR NATIONAL LEGISLATION CONTAIN A PROVISION PREVENTING ACCOUNTANTS OR TAX ADVISORS TO DISCLOSE TO THE CLIENT
Elements showing that he has reasonable grounds for suspecting money laundering.
Yes No
That the fact or transaction has been reported to the FIU ("tipping off")
Yes No

Q. 28: DOES YOUR NATIONAL LEGISLATION CONTAIN A PROVISION PREVENTING STATUTORY AUDITORS TO DISCLOSE TO THE CLIENT
Elements showing that he has reasonable grounds for suspecting money laundering.
Yes No
That the fact or transaction has been reported to the FIU ("tipping off")
YES NO

Monitoring of Compliance

Q. 29: Are the requirements that accountants and auditors need to fulfil in the context of anti-money laundering legislation monitored
By the Institute regularly
By authorities incident-related monitoring

Q. 30: When the monitoring body is an *authority separate from the Institute*,
A. What sanctions/penalties can be imposed?
Administrative sanctions/measures
Disciplinary sanctions
Bring the case before a criminal court

B. If available, please indicate how many sanctions have been imposed; if applicable, indicate that the reporting system was not in place for the year

	2003	2004	2005	2006
<input type="checkbox"/> Administrative
<input type="checkbox"/> Disciplinary
<input type="checkbox"/> Criminal court
<input type="checkbox"/> System not in place

Q. 31: When the *monitoring body, is the professional body* what sanctions/penalties,
A. What sanctions/penalties can be imposed?
Administrative sanctions/measures
Disciplinary sanctions
Bring the case before a criminal court

B. If available, please indicate how many sanctions have been imposed; if applicable, indicate that the reporting system was not in place for the year

	2003	2004	2005	2006
<input type="checkbox"/> Administrative
<input type="checkbox"/> Disciplinary
<input type="checkbox"/> Criminal court
<input type="checkbox"/> System not in place



Effectiveness of the Reporting System

Q. 32: How many reports of facts to the Financial Intelligence Unit have been sent by professional accountants (if available)?

	Auditors	Accountants	Tax Advisors
<input type="checkbox"/> 2002
<input type="checkbox"/> 2003
<input type="checkbox"/> 2004
<input type="checkbox"/> 2005

Q. 33: A. Do you believe that the applicability of the anti-money laundering directive to the accountancy profession has a real impact in the fight against money laundering?

Yes **No**

B. Were research studies conducted in your country concluding (or not) to the effectiveness of the system? If yes please explain briefly **Yes** **No**

C What do you think would be the most effective role for the accountancy profession in the fight against money laundering? Please add your comments.

Please, add any electronic document relevant to the implementation of the European directives on the prevention of money laundering and terrorist financing in your country.

Should you have any question with regard to this questionnaire, please contact Henri Olivier FEE Secretary General at the following address: henri.olivier@fee.be.

APPENDIX 3: STATISTICS

The following data about the number of reports of facts to the FIUs were provided by FEE Member Bodies⁹². Further information can be obtained via the websites of the national FIUs (see Appendix 4).

The numbers show large differences across the Member States which implies that there might be a difference in law as to what has to be reported.

	From Auditors	From Accountants	From Tax advisors
Austria	2 (2006)		2 (2006)
Belgium	2 to 12 (2002 to 2006)	0 to 5 (2002 to 2006)	1 to 3 (2002 to 2006)
Cyprus	1 in 2005		
Germany	1 to 2 (2004 to 2005)	0 to 1 (2004 to 2005)	1 to 6 (2004 to 2005)
Finland	2 – 4 (2003 – 2005)	2 – 5 (2003 – 2005)	1 – 2 (2003 – 2005)
Hungary	3 (2008)	7 (2008)	1 (2008)
Ireland	39 (2004), 32 (2005), 32 (2006), 21 (2007), 31 (2008)		
Italy	2 (2006); 3 (2007))	39 (2006), 47 (2007)	
Latvia	4 in 2005		
Netherlands	10 – 76 (2003 – 2006)		0 – 13 (2003 – 2006)
Norway	25 – 78 (2005 – 2008)	8 – 44 (2004 – 2008)	
Slovenia	0 – 2 (2002 – 2005)	0 – 2 (2002 – 2005)	0
Spain	5 (2007)		
UK	8202 (2006/2007)		

⁹² Question 32 of the FEE questionnaire

APPENDIX 4: LIST OF FIUS

1. Financial Intelligence Units in countries covered by this survey

EU-Country	Link
Austria	http://www.bmi.gv.at/kriminalpolizei/
Belgium	http://www.ctif-cfi.be/menu.php?lang=en
Czech Republic	http://193.86.123.148/cps/rde/xchg/mfcr/xsl/en_organisation_chart_30624.html
Cyprus	http://www.law.gov.cy/law/mokas/mokas.nsf/dttindex_en/dttindex_en?OpenDocument
Finland	http://www.fin-fsa.fi/Eng/Market_entry/Anti-money_laundering/etusivu.htm
France	http://www.tracfin.minefi.gouv.fr/
Germany	http://www.bka.de/profil/zentralstellen/geldwaesche/impressumfiu.html
Hungary	http://www.police.hu/
Ireland	http://www.garda.ie/Controller.aspx?Page=29&Lang=1
Italy	http://www.bancaditalia.it/UIF
Latvia	Kontroles dienests, Noziedīgi iegūto līdzekļu legalizācijas novērsšanas dienests (KD) Control Service / Office for Prevention of Laundering of Proceeds Derived from Criminal Activity – link not available
Lithuania	http://www.fntt.lt/en.php/138
Luxembourg	http://www.gouvernement.lu/dossiers/justice/crf/index.html
Malta	http://www.fiumalta.org/index.html
The Netherlands	http://www.fiu-nederland.nl/
Poland	http://www.mf.gov.pl/index.php?const=7#n
Portugal	http://www.policiajudiciaria.pt/PortalWeb/page/%7BE6E29429-8228-44A5-8338-9A3F3BCC3986%7D
Romania	http://www.onpcsb.ro/
Slovakia	Spravodajská jednotka finančnej polície Úradu boja proti organizovanej kriminalite (SJFP UBPOK) / Financial Intelligence Unit of the Bureau of Organised Crime – link not available
Slovenia	http://www.uppd.gov.si/angl/index.htm
Spain	http://www.sepblac.es/ingles/acerca_sepblac/acercade.htm
Sweden	http://www.fi.se/Default_3.aspx
United Kingdom	http://www.soca.gov.uk/financialIntel/ukfiuStructure.html
Non EU-Country	Link
Norway	http://www.hvitvasking.no/In-english/
Switzerland	http://www.fedpol.admin.ch/fedpol/de/home/themen/kriminalitaet/geldwaescher/ei.html

2. FIUs in further countries across Europe and the World

A list of FIUs in countries across the world is available at the Egmont Group Website:
http://www.egmontgroup.org/list_of_fiuis.pdf.



APPENDIX 5: GLOSSARY OF TERMS

AML	Anti-Money Laundering
AMLD	Anti-Money Laundering Directive (EU legislation)
CFT	Combating Financing of Terrorism
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GPML	Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism
IMF	International Monetary Fund
LEOCMLU	Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of the United Nations Office on Drugs and Crime (UNODC)
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
TF	Terrorist Financing
UNODC	United Nations Office on Drugs and Crime
UNODC-GPML	UNODC Global Programme against Money-Laundering



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