The Reform of the Fight against Money Laundering in the EU

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Money laundering is a major threat to the integrity of the financial system and the stability of the EU's economy. It is moreover one of the means used to finance terrorism – often through the laundering of small amounts of money. In order to combat it, the EU favours a holistic approach encompassing money laundering and terrorist financing. Hence, the fight against money laundering in the EU relies on the legal framework set by the successive directives, in the wake of the FATF's recommendations.

Money laundering is one of the few criminal offences defined at the EU level. It consists in "the conversion or transfer of property, knowing that such property is derived from criminal activity… for the purpose of concealing or disguising the illicit origin of the property…," or "the concealment of the true nature, source, location, disposition,… ownership of property, knowing that such property is derived from criminal property…," or "the acquisition, possession or use of property, knowing at the time of receipt that such property was derived from criminal activity…," or "participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission"[1] of these actions. However, there is no complete harmonisation, since the predicate offences leading to money laundering may vary from one Member State to another.[2] The European Banking Federation even calls for increased harmonisation.[3] Nevertheless, the EU is at the forefront of the fight against money laundering, and its directives and national legislation implementing them account for some of the most stringent anti-money laundering (AML) standards in the world. Hence, all Member States have set up financial intelligence units (FIUs), which are responsible for receiving suspicious transaction reports (STRs) from the professionals required to fight money laundering (the obliged entities).

The core element of the AML mechanism lies in the risk-based approach (RBA). It aims at tracking money flows and uncovering the identity of concealed beneficial owners of the funds. According to this approach, obliged entities are required to assess the level of risk of the transactions planned by their customers. They then report suspicious transactions on the basis of their own judgment. The RBA was introduced in 2005 by the third AML directive and clearly departed from the previous rule-based approach. Previously, professionals had to systematically report whenever the criteria defining suspicious transactions were met.

Although the FATF did not call for drastic changes to the RBA in its 15 February 2012 recommendations,[4] the latter amounts to a major overhaul of the rules and will lead to a new directive. Hence, the Commission issued a proposal for a new AML directive on 5 February 2013,[5] alongside a proposal for a regulation on fund transfers.[6] The proposed reform therefore consists in an evolutionary approach. The Commission aims at strengthening the requirements imposed on obliged entities and fostering cooperation between FIUs. It also focuses on better coordination between the fight against money laundering and the fight against other financial offences such as tax evasion.

The proposed reform will enlarge the scope of the directive and strengthen the risk-based approach.

I. Enlarging the Scope of the Directive

Since the adoption of the first directive in 1991,[7] the scope of EU AML legislation has been steadily increasing. Although it is not as drastic an increase as the second directive,[8] the Commission's proposal provides for yet another enlargement.

The scope of the directive is to be extended both *rationae materiae* and *rationae personae.*

1. *Rationae Materiae:* More Predicate Offences

The criminal offences whose proceeds are transferred into the real economy by money launderers are called predicate offences. Their definition is crucial, since only money from such offences can be legally characterised as being laundered and therefore be combated. The list of predicate offences has been extended by each new AML directive. The Commission's proposal is no exception in this respect, placing emphasis on tax crimes.

The approach adopted in the successive directives does not compel Member States to harmonise predicate offences. Even though harmonisation of substantive criminal law is provided for in Art. 83 TFEU,[9] it is still very limited. This might lead to discrepancies in the implementation of AML rules among Member States. Moreover, the corresponding sanctions may vary. In this respect, a step forward may consist in the Commission's July 2012 proposal for a directive on the fight against offences to the Union's financial interests by means of criminal law, which may lead, for instance, to a harmonised definition of corruption.[10]

The first AML directive mainly focused on drug trafficking.[11] The scope of predicate offences was then extended by Directive 2001/97/EC. Major offences such as corruption, offences committed against the EU's financial interests and serious crimes were added. According to the proposal, predicate offences are: terrorist acts – as defined in Framework Decision 2002/475/JHA,[12] drug trafficking,[13] the activities of criminal organisations, fraud affecting the financial interests of the EU,[14] corruption, and all offences punishable by deprivation of liberty for a maximum of more than one year – the definition of the latter is left to national law.

Remarkably, the proposal provides for the systematic inclusion of tax crimes. Although they were already part of the predicate offences under the previous directive based on national legislations punishing them as serious crimes, tax crimes will formally be designated as predicate offences.[15] This regards offences related both to direct and indirect taxes. Stemming from the FATF's recommendations,[16] this inclusion contributes to the tougher stance against financial crimes adopted by the EU. Such an approach may help deter tax evasion, since it can make it more difficult for tax criminals to use the proceeds of their crimes. However, this may well raise the number of STRs being filed, thus increasing the workload of FIUs. It might also hamper the achievement of one of the stated goals of the most recent AML directives, i.e., to prevent FIUs from being overwhelmed in order to increase the efficiency of the mechanism. This might prevent them from focusing on the worst offences committed by organised criminal networks such as drug trafficking and terrorism. In this respect, the European Banking Federation calls for a slight shift in the Commission's approach. It suggests that minor tax offences be excluded from the reporting obligation in order to avoid overwhelming FIUs.[17]

Practical issues may also hinder the efficiency of this approach. There is often a time lapse between the moment when a transaction is reported and the effective tax payment. This can make the transaction look suspicious even though the required tax will eventually be paid. Moreover, tax law can be very complex. Professionals may not always be fully aware of foreign tax rules. Their customers often walk a tight rope, trying to avoid paying taxes without actually breaking the law. Sometimes, they achieve this goal and use the loopholes that are characteristic of tax rules. This situation makes it all the more difficult for professionals to analyse transactions and to assess risk level of money laundering.

2. *Rationae Personae:* More Obliged Entities

The persons involved in the fight against money laundering are both those fighting it and those taking part in it. The scope of the obliged entities is to be further extended by the forthcoming directive. As regards the people being targeted, the category of politically exposed persons (PEPs) will be broadened.

The list of obliged entities has grown with each new directive. Whereas Directive 91/308/EEC was limited to bankers and financial institutions, the second AML directive added legal professionals, casinos, remittance offices, and insurance companies. The much debated situation of lawyers with regard to their duty to report suspicious transactions needs to be discussed before analysing the few additions brought about by the Commission's proposal.

a) To what extent should lawyers report?

The case of lawyers is highly specific. They have been required to file STRs since the entry into force of Directive 2001/97 EC. Its preamble states that "there is a trend towards the increased used by money launderers of non-financial business."[18] Therefore, "notaries and independent legal professionals… should be made subject to… the Directive."[19] However, the same directive provides for an exception. Lawyers are not required to report information obtained "in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in… judicial proceedings, including advice on instituting or avoiding proceedings."[20] These principles are carried over in the Commission's proposal, in line with the FATF's recommendations.[21] Hence, lawyers "should be subject to the provisions of the Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for… laundering the proceeds of criminal activity or for…terrorist financing."[22] In fact, lawyers have a duty to report only when they take part in financial, real estate, or corporate operations.

Moreover, where lawyers are required to report suspicious transactions, they should report to their own professional self-regulatory bodies and not to FIUs. This rule aims at safeguarding their independence and the confidentiality of their relationships with their clients. To this end, Member States should "nominate the bar association or other self-regulatory bodies for independent professionals as the body to which reports on possible money laundering cases may be addressed."[23] These bodies may then forward STRs to FIUs, accordingly to "the appropriate forms of cooperation between the bar associations or professional bodies and these authorities."[24] The rules governing such cooperation are to be adopted by Member States.

The obligations imposed on lawyers have been further specified in the famous ECJ ruling *Ordre des barreaux francophones et germanophones*.[25] The Court – as well as the French *Conseil d'Etat*[26]– stated that the obligation to report suspicious transactions should not apply to lawyers acting within the scope of legal counselling or judicial proceedings. The ECJ rejected the applicants' arguments that the duty to report was in breach of lawyers' professional confidentiality and of Art. 6 of the ECHR, as well as Arts. 47 and 48 of the Charter of Fundamental Rights of the EU and Arts. 10 and 11 of the Belgian Constitution. Moreover, the derogation provided was, according to the applicants, insufficient to safeguard lawyers' relationships with their clients as well as the clients' rights of defence. On the contrary, the Court held that "the obligations of information and of cooperation with the authorities responsible for combating money laundering… do not infringe the right to a fair trial as guaranteed by Art. 6 of the ECHR and Art. 6 (2) EU."[27]

Furthermore, in its *Michaud vs. France* ruling,[28] the ECtHR held that lawyers' duty to report complies with the ECHR, especially Art. 8 protecting privacy and the confidentiality of correspondence. All correspondence between lawyers and their clients benefits from enhanced protection. Indeed, "lawyers cannot carry out" their task "if they are unable to guarantee to those they are defending that their exchanges will remain confidential." The Court added that the right to a fair trial is "indirectly but necessarily dependent"[29] on the protection of this correspondence. Hence, Art. 8 ECHR contributes to the protection of professional legal privilege.[30] The *Conseil d'Etat* had found that the duty to report complied with the fundamental right to professional confidentiality.[31] After stressing the role played by legal professional privilege in the lawyer-client relationship and in the proper administration of justice, the ECtHR explained that it can give way to other rights. Moreover, the AML directive and French law provide for safeguards limiting interference with legal professional

privilege. In fact, lawyers are compelled to file STRs only when they take part in business transactions on behalf of their clients and when they assist them in preparing or carrying out related transactions. Thus, "the obligation to report… only concerns tasks performed by lawyers which are similar to those performed by the other professions subjected to the same obligation, and not the role they play in defending their clients."[32] Consequently, "the obligation for lawyers to report suspicions, as practiced in France, does not constitute disproportionate interference with the professional privilege of lawyers."[33]

Apart from the case of lawyers, the proposal provides for an extension of the list of obliged entities. It will include professionals from the "gambling sector"[34] and no longer only "casinos," in order to take into account online gambling. It will also comprise persons dealing in goods or providing services for cash payment of €7,500 or more.[35] This broadening of the scope of the directive goes beyond the FATF's requirements. Recommendation No 22 only provides for "casinos," and the threshold for cash payments is set at €15,000.[36]

b) A broader scope for PEPs

The extension of the *rationae personae* scope of the directive also concerns the persons being watched by obliged entities. Strikingly, the provisions dealing with politically exposed persons are to include national (and EU) PEPs.

The definition of PEPs stems from a specific directive, Directive 2006/70/EC,[37] thus demonstrating the importance of the issue. The drafting of this directive was called for by users expressing the need for a more accurate definition of this key concept. The FATF also issued a specific guideline[38] concerning PEPs.[39] They are defined as "natural persons who are or have been entrusted with prominent public functions."[40] Such functions include: heads of state, heads of government, ministers, members of parliament, members of courts whose decisions are not subject to further appeal, members of courts of auditors or the boards of central banks, ambassadors, and high-ranking officers in armed forces and executives of state-owned enterprises. These functions include positions held at the EU level or at the international level. These persons' family members – spouses, partners, and others – are also considered PEPs. Their close associates are also to be included if they share the beneficial ownership of legal entities or have any kind of close business relationships. Moreover, when PEPs are no longer granted prominent public functions, they should still be considered as such one year after the termination of their functions.

As regards foreign PEPs, the proposal carries over the mechanism set up by the third directive. Not only are the obliged entities required to apply customer due diligence (CDD), but they also have to implement additional measures. The latter include appropriate risk-based procedures to determine whether customers or beneficial owners are PEPs as well as the origin of their wealth and of the funds being transferred. More strikingly, professionals must seek approval from their senior management to establish or continue business relationships with PEPs. This very specific obligation indicates the sensitive nature of the latter. It ensures that they are supervised by professionals who are well aware of compliance issues and fully trained to apply AML regulations. This also helps reduce the liability of lower-level professionals in handling AML requirements with PEPs.

In line with the FATF's recommendations,[41] the Commission's proposal extends the scope of the directive. Hence, when entering a business relationship with "domestic politically exposed persons or a person who is or has been entrusted with a prominent function by an international organization," obliged entities must apply the specific enhanced CDD designed for PEPs. This is a noteworthy change from Directive 2005/60 under which domestic PEPs were excluded from the scope of the EU's AML mechanism. This change is part of the strengthening of the obligations imposed on professionals. It is a welcome improvement, since domestic officials and those appointed by international organisations can be used by money launderers given their prominent positions. This new obligation may nevertheless further contribute to the difficulty of the profes-

sionals' task. They will have to assess the level of risk characterising transactions performed by domestic officials, having therefore to deal with very sensitive issues. The required approval from senior management is a necessary condition in this respect. The European Banking Federation calls for the adoption of a list of PEPs in different jurisdictions.[42] This may of course prove useful, but one must bear in mind that such lists would need to be frequently updated.

The Commission's proposal thus provides for a further extension of the scope of EU AML legislation. It also provides for enhanced rules governing the way money laundering is fought, aiming at strengthening the risk-based approach.

II. Strengthening the Risk-Based Approach

The RBA has been at the heart of the EU's AML mechanism since the entry into force of the third directive. In its proposal, the Commission does not plan to depart from this approach, which has proven more efficient than the former rule-based approach.[43] It nevertheless calls for some improvements in light of the ever-changing nature of criminal activities.

Hence, the proposal provides both for stricter obligations vested upon professionals fighting money laundering and for more duties imposed on other stakeholders.

1. Stricter Obligations Vested upon Professionals: Due Diligence is a Tight Rope to Walk

Directive 2005/60 had achieved a breakthrough by relying on professionals to effectively fight money laundering. Since then, they have been in charge of monitoring transactions. They are in fact granted a remarkable margin of discretion. They are required to assess the risk level of each transaction. In doing so, they should apply CDD. Furthermore, they are required to always do their best to identify the beneficial owner of the funds. The latter is the "natural person on whose behalf a transaction or activity is conducted." The words "on behalf" encompass all kinds of links binding the client to the beneficial owner. Such a broad definition is meant to help in the detection of more suspicious transactions. It should furthermore allow the mechanism to be applied to future money laundering techniques. Money launderers – and their advisors – keep designing new ways of concealing the source of money. This flexible approach has been retained and even reinforced by the Commission in its proposal.

In compliance with the FATF,[44] EU and national regulations provide guidelines for the professionals. According to their assessment of the level of risk, they are required to apply enhanced CDD or simplified CDD.

a) Simplified customer due diligence

In Arts. 15 and 16 of its proposal, the Commission calls for stricter rules applying to simplified CDD. It does not provide for any exception. Decisions on whether to apply such a simplified diligence will have to be justified on the basis of lower risk characterising transactions or customer relationships.[45] There is no detailed description of the measures to be taken under such circumstances. The European supervisory authorities are to adopt guidelines on simplified CDD within two years of the entry into force of the directive.

Under the current regime, Directive 2005/60 provides for an automatic derogation where the customers are credit or financial institutions. Member States can furthermore allow professionals not to apply CDD to companies "listed on a regulated market" within the scope of Directive 2004/39/EC,[46] domestic public authorities, and other customers who represent a low risk of engaging in money laundering or terrorist

financing. Customers who are public authorities or bodies can benefit from simplified CDD under specific conditions.[47] Those who are not public entities should comply with the directive; their identity should be publicly available, transparent, and certain. They should be subject to a mandatory licensing requirement under national law for the undertaking of financial activities, and they should be subject to supervision within the scope of the directive.

b) Enhanced customer due diligence

Enhanced CDD is provided for in Arts. 16 through 23 of the proposal. The mechanism designed by the successive directives and carried over in the proposal aims at discovering the identity of the beneficial owner of the funds, no matter what his contractual – or informal – links with the professional client are. All kinds of contracts are therefore subject to AML requirements, no matter what the national law governing them is. In response to the creative techniques used to conceal the beneficial owner's identity, EU legal provisions have been drafted in a very broad manner. One can only be in favour of this pragmatic approach, which takes into account economic situations and not only legal instruments. The same approach takes precedence over the FATF's recommendations.[48]

Apart from contracts, legal structures can be used to conceal the identity of the beneficial owner. They encompass all kinds of legal persons as well as bodies not benefiting from a legal personality. Professionals need to search for the identity of beneficial owners hiding behind multi-layered corporate structures. Such a task is very time-consuming and can prove next to impossible. Moreover, some of the relevant corporate structures are often registered abroad and sometimes even in jurisdictions which do not comply with OECD standards. This makes the hunt for the beneficial owner a very difficult task, to say the least.

If the customer is an incorporated company, the beneficial owner is the person controlling its capital or its board. Two main criteria are used in order to determine the beneficial owner's identity: control of the capital of the company and control over its board or executives. The first criterion implies that a person who owns or controls directly or indirectly not more than 25% of the shares of a company should be regarded as the beneficial owner. The criterion concerning the control of the board is not precisely defined. In this case, the beneficial owner is the person who ultimately controls the company, no matter whether he or she plays an official part or a covert one. This broad criterion allows various situations to be covered. The 25% ownership threshold has been carried over in the proposal. It is a clear and easy-to-apply guideline for obliged entities, which is widely used by European institutions. The FATF uses it as well. The Commission advocates the use of the same criterion in cases in which such control is indirect. The European Banking Federation opposes this extensive use of the 25% ownership threshold, calling instead for a unified approach from both the EU and the FATF. In fact, the latter does not use a specific threshold in the case of indirect ownership, referring only to "control" of an entity.[49]

c) Online banking

The proposal provides that non face-to-face banking relationships shall no longer be systematically considered as consisting in high risks of money laundering. This change stems from the development of online banking and dematerialised transactions which do not require customers to be physically present. Although such transactions are not *per se* suspicious, e-banking should be monitored. Breaking away from old-style banking, it creates a new kind of banker-customer relationship which seldom implies face-to-face encounters. Such banking techniques might facilitate money laundering, since their dematerialised nature makes it easier for beneficial owners to conceal their identity, thus offering almost risk-free means of money laundering and terrorist financing. Moreover, prepaid cards – which can be purchased online – pose a new threat. They offer an easy way to transfer funds while maintaining anonymity. The European Banking Federation welcomes this improvement, since it appears well suited to new e-banking techniques. It nevertheless

calls for the use of qualified documents, which would facilitate the identification of customers and beneficial owners, thus helping meet the requirements of CDD.[50] The Commission issued proposals on e-identification in June 2012, aiming at improving this situation.[51]

2. More Duties Imposed on Other Stakeholders

The Commission's proposal is more innovative in this respect. Besides CDD performed by obliged entities, it provides for reinforced – and sometimes new – duties imposed on other stakeholders.

Legal persons will be required to clearly identify their beneficial owners and keep registers. They will have to gather and "hold adequate, accurate and current information on their beneficial ownership."[52] The same obligation will apply to trustees.[53] They will have to make the information available to competent authorities such as FIUs and obliged entities performing CDD. This new requirement stems from the FATF's recommendations.[54] It seems to be a major step forward, although it will be very difficult to comply with in practice. Legal entities are often used by money launderers as a means to conceal their identity and especially that of the actual beneficial owner. Such legal persons may well hold registers listing false beneficial owners. Nevertheless, this provision is useful as it will provide a legal basis for criminalising such behaviour.

Although it is not provided for in the Commission's proposal, public authorities might further contribute to the efficiency of the AML mechanism by maintaining central registers of beneficial owners. This would facilitate the professionals' task while performing CDD. It would also facilitate international cooperation among FIUs. Transparency International calls for the creation of such registers.[55] It asks that Member States "agree to mandatory public registers of beneficial owners," which would "help banks and other financial institutions do their work properly."[56] The EU has in fact already paved the way for the creation of such centralised registers by adopting Directive 2012/17/EU on the Interconnection of central, commercial and companies' registers,[57] advocating the creation of a "European business register." It would provide information about registered companies online, thus offering direct access to each participating country's official register. The same approach could be used in the field of AML and perhaps lead to the creation of a Europe-wide register of beneficial owners. There is no provision allowing financial institutions to access information in public registers on companies in the proposal. This would probably foster transparency, thus facilitating the search for the beneficial owner's identity.

As it is currently the case,[58] third parties will still be allowed to monitor the obliged entities' customers and their transactions.[59] The same categories of professionals can act as third parties and perform CDD instead of others. Moreover, they must be "subject to mandatory professional registration, recognized by law." They are required to perform CDD, under supervision from national authorities in Member States or in third countries that impose equivalent requirements.

Finally, the Commission proposes bolstering cooperation between national FIUs.[60] Such cooperation already exists at the international level thanks to the Egmont group.[61] However, it needs to be further improved at the EU level, given the differences between national AML mechanisms. In some Member States, FIUs are independent administrative bodies, whereas in others they are departments within a ministry or in yet others they are embedded within national police forces. Such differences, though not an impediment to the efficiency of the AML mechanisms at the national level, may hamper European cooperation. For instance, FIUs within the police may not be allowed to exchange information with their European counterparts without prior authorisation from a prosecutor. A more efficient fight against money laundering requires the speedier exchange of information between FIUs. Such legal obstacles should be lifted.

III. Conclusion: Increased Efficiency

The Commission's proposal amounts to welcome improvements. Its overall goal is of course to step up the efficiency of the fight against money laundering, both by extending the scope of the directive and by strengthening the RBA.

All in all, the development of the EU's anti money-laundering legislation can be considered a success story. Despite some differences in national definitions of criminal offences and some implementation issues – e.g., compliance with lawyers' legal professional privilege –, Member States tend to transpose and comply with AML directives.

The forthcoming directive will probably increase the efficiency of the EU's AML mechanism, thus implementing the latest FATF recommendations. This improvement will of course not prevent criminals from designing new ways to launder money and to conceal the identity of the actual beneficial owners. Nevertheless, stricter AML legislation might pave the way for more harmonisation of criminal law at the EU level and a better coordination of the fight against other financial crimes such as corruption. In this respect, the creation of the European Public Prosecutor's Office[62] may well be another step towards a safer Europe for citizens and a tougher and more coordinated fight against financial crime throughout the EU.

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1. Directive 2005/60 EC of the European Parliament and 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, OJ L 309/15, 25 November 2005, Art. 1 (2).↩
2. For instance, the third AML directive mentions "serious crimes" as predicate offences. Such crimes are punishable by a minimum maximum prison term of one year. However, the corresponding offences in all Member States may not be exactly the same.↩
3. European Banking Federation, EBF Position on the European Commission Proposal for a 4th Anti-Money Laundering Directive, 22 April 2013, http://www.ebf-fbe.eu/uploads/EBF001279-2013%20-%20EBF%20Position%20on%20the%20EC%20Proposal%20for%20a%204th%20EU%20AML%20Directive.pdf, p. 1 (further: EBF).↩
4. FATF, International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation, the Recommendations, Paris, 15 February 2012, http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html.↩
5. European Commission, Proposal for a Directive of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, COM (2013) 45 final, 5 February 2013 (further: the Proposal).↩
6. European Commission, Proposal for a Regulation of the European Parliament and of the Council on Information accompanying Transfers of Funds, COM (2013) 044 final, 5 February 2013.↩
7. Council Directive 91/308/EEC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, OJ L 166, 28 June 1991.↩
8. 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, OJ L 344, 28 December 2001.↩
9. Art. 83 TFEU provides for the possibility for the European Parliament and the Council to adopt harmonised substantial rules of criminal law in order to "establish minimum rules concerning the definition of criminal offences and sanctions in the area of particularly serious crime with a cross-border dimension" dimension.↩
10. European Commission, Proposal for a Directive of the European Parliament and of the Council on the Fight against Fraud to the Union's Financial Interests by Means of Criminal Law, COM (2012) 363 final, 11 July 2012.↩
11. As well as other criminal activities defined as such by Member States, Council Directive 91/308/EEC, Art. 1.↩
12. Council Framework Decision of 13 June 2002 on Combatting terrorism 2002/475/JHA, OJ L 164/3, 22 June 2002.↩
13. As defined in the United Nation's Convention against Trafficking in Narcotic Drugs and Psychotropic Substances.↩
14. As defined in the Convention on the Protection of the Financial Interests of the EU (OJ C 316, 27 November 1995).↩
15. Proposal, Art. 3.4.(f)↩
16. FATF recommendation No. 3 and its interpretative note.↩
17. EBF, p. 5.↩
18. Directive 2001/97, recital 14.↩
19. Directive 2001/97, recital 16.↩
20. Directive 2001/97, Art. 6.3.↩
21. FATF recommendation No. 23 and its interpretative note.↩
22. Proposal, recital 7.↩
23. Directive 2001/97, recital 20.↩
24. Directive 2001/97, recital 20.↩

25. ECJ, Grand Chamber, case C-305/05, *Ordre des barreaux francophones et germanophones, Ordre français des avocats du barreau de Bruxelles, Ordre des barreaux flamands, Ordre néerlandais des avocats du barreau de Bruxelles v. Conseil des Ministres,* 26 June 2007.↩
26. In its 2008 ruling: *Conseil d'Etat,* cases No. 296845 and 296907, *Conseil national des Barreaux et al.,* 10 April 2008.↩
27. ECJ, *Ordre des Barreaux*, 37.↩
28. ECtHR, case No. 12323/11, *Michaud vs. France*, 6 December 2012.↩
29. ECtHR, *Michaud vs. France*, 118.↩
30. ECtHR, *Michaud vs. France*, 119.↩
31. The interference with this right was justified by the general interest attached to fighting money laundering and the exclusion of information obtained by lawyers in the course of legal proceedings. Contrary to common law countries, France grants professional confidentiality to relationships between lawyers and their clients. The main difference lies in the fact that legal professional privilege is considered a subjective right and can therefore be waived by the client. Professional confidentiality amounts to an objective right – i.e., a right conferred by a general rule and benefitting society as a whole. The client cannot waive it. Given the different kinds of legal systems characterising the Member States of the Council of Europe, the ECtHR has to design global rules encompassing these various situations.↩
32. ECtHR, *Michaud vs. France*, 128.↩
33. ECtHR, *Michaud vs. France*, 131.↩
34. Proposal, Art. 2. 1.(3) f.↩
35. Proposal, recital 6 and Art. 2.1(3.) e.↩
36. FATF, recommendation No. 22 and interpretative notes to recommendations 22, 23, and 32.↩
37. Commission Directive 2006/70 EC of 1 August 2006 laying down implementing measures for Directive 2005/60 of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, OJ L 214/29, 4 August 2006.↩
38. Described as « guidance » by the FATF.↩
39. FATF Guidance Politically Exposed Persons (Recommendations 12 and 22), 15 February 2012.↩
40. Directive 2006/70, Art. 2.↩
41. FATF, recommendation 12.↩
42. EBF, p. 3.↩
43. European Commission, Report from the Commission to the Parliament and the Council on the Application of Directive 2005/60 EC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, COM (2012) 168 final, 11 April 2012.↩
44. FATF recommendation No. 10.↩
45. Arts. 13 and 14 of the proposal provide for the need to ascertain the low risk level of such situations.↩
46. Directive 2004/39 EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22 EEC, OJ L 145/1, 30 April 2004.↩
47. They must fulfil all the following criteria: the customer has been entrusted with public functions; its identity is publicly available, transparent and certain; its activities are transparent; and the customer is accountable to a Community institution or the authorities of a Member State.↩
48. FATF recommendation No.10 (b).↩
49. EBF, p. 2.↩
50. EBF, p. 3.↩
51. European Commission, Proposal for a Regulation of the European Parliament and of the Council on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market, COM (2012) 238 final.↩
52. Proposal, Art. 29.1.↩
53. Proposal, Art. 29.2.↩
54. FATF recommendation No. 24.↩
55. Transparency international, The 4th Anti-Money Laundering Directive: Brussels hears what we want to talk about, 18 March 2013, http://www.transparencyinternational.eu/2013/03/the-4th-anti-money-laundering-directive-brussels-hears-what-we-want-to-talk-about.↩
56. Transparency International, EU Leaders must end Financial Secrecy, 21 May 2013, http://www.transparency.org/news/pressrelease/eu_leaders_must_end_financial_secrecy.↩
57. FATF, recommendation No. 10 and its interpretative note.↩
58. Directive 2005/60, Art. 14.↩
59. Proposal, Art. 25.↩
60. Proposal, recital 39.↩
61. http://www.egmontgroup.org.↩
62. European Commission, Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office, COM (2013) 534 final, 17 July 2013.↩

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