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Internal Market DG

FINANCIAL MARKETS

Company law, corporate governance and financial crime

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WORKING PAPER

Preliminary Draft Articles for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on prevention of the use of the financial system for the purpose of money laundering and terrorist financing and repealing Directive 91/308/EEC as amended by Directive 2001/97/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), first and third sentences, and Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (the 1991 Directive)⁴ was adopted in response to the concern that the soundness and stability of credit and financial institutions and confidence in the financial system could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds (money laundering);
- (2) Community action was necessary in this area to avoid the danger that Member States might adopt measures to protect their financial systems which could be inconsistent with the completion of the single market;
- (3) It was recognised that combating money laundering was one of the most effective means of opposing organised crime and that, in addition to the criminal law approach, a preventive effort via the financial system could also produce results;

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- (4) The 1991 Directive took particular account of the Forty Recommendations adopted by the Financial Action Task Force on Money Laundering (FATF), the leading international body devoted to the fight against money laundering;
- (5) The 1991 Directive required Member States to prohibit money laundering and to oblige their credit and financial institutions to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities;
- (6) The 1991 Directive only obliged the Member States to combat the laundering of the proceeds of drugs offences; subsequently, however, an international trend developed towards the inclusion of a broader range of predicate or underlying offences in the definition of money laundering;
- (7) It was also noted that the tightening of controls in the financial sector had prompted money launderers to seek alternative methods for concealing the origin of the proceeds of crime, including the misuse of various non-financial activities and professions;
- (8) In response to these two developments, the European Parliament and the Council adopted Directive 2001/97/EC (the 2001 amending Directive)⁵ to extend the criminal activity covered by the 1991 Directive's definition of money laundering to include a wide range of serious crime and to broaden the coverage of the Directive beyond the financial sector to embrace a wide range of other professions and activities;
- (9) The definition of serious crime in the 1991 Directive as amended in 2001 (the amended Directive) referred inter alia to offences which may generate substantial proceeds and which are punishable by a severe sentence of imprisonment;
- (10) The Council invited the Commission to present before 15 December 2004 a proposal to bring this definition into line with the definition of serious crime in Joint Action 98/699/JHA⁶;
- (11) In June 2003 the FATF completed a substantial revision of its Forty Recommendations, thus updating and expanding the de facto world standard in the fight against money laundering;
- (12) Following the terrorist attacks of 11 September 2001, the FATF had also taken the lead in the international effort to combat the misuse of the financial system for the financing of terrorism; the revised Forty Recommendations were also drafted to apply not only to money laundering but also to terrorist financing;
- (13) The fight against money laundering and terrorist financing are top political priorities of the European Community; it is therefore appropriate that the amended Directive should be updated in line with the wishes of the Council and in order to continue to reflect best international practice in the effort to combat money laundering and terrorist financing, as reflected in the revised Forty

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Recommendations of the FATF; the definition of terrorist financing is based on Article 2 of the UN International Convention for the Suppression of the Financing of Terrorism and on Articles 1 to 4 of Council Framework Decision 2002/475/JHA⁷ on combating terrorism;

- (14) There remain certain gaps in the amended Directive's coverage of vulnerable activities; the range of persons subject to the amended Directive should therefore be extended to include life insurance intermediaries and trust and company service providers; in addition the range of dealers in high-value items falling under the Directive in respect of large cash payments should be extended;
- (15) The amended Directive, though imposing a customer identification obligation, contained relatively little detail on the relevant procedures; in view of the crucial importance of this aspect of anti-money laundering prevention, it is now appropriate, in accordance with the new international standards, to introduce more specific and detailed provisions relating to the identification and verification of the customer and of any beneficial owner;
- (16) It should be recognised that the risk of money laundering and terrorist financing is not the same in every case; in line with a risk-based approach, the principle should be introduced into the Community legislation that simplified customer due diligence could be allowed in appropriate cases; the Contact Committee established under the Directive should be kept informed of the cases where Member States allow such simplified procedures;
- (17) Equally, Community legislation should recognise that certain situations present a greater risk of money laundering or terrorist financing and require particularly rigorous customer identification and verification procedures;
- (18) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in international business, it is appropriate, subject to suitable safeguards, to allow customers to be introduced whose identification has been carried out elsewhere; within the Community, such mutual recognition of customer identification should be obligatory;
- (19) The amended Directive stipulates that reports of suspicious transactions should be reported to the authorities responsible for combating money laundering; such authorities are now generally referred to as financial intelligence units and this terminology should be used in Community legislation; all Member States should have a financial intelligence unit and it should be made clear that attempted money laundering or terrorist financing should also be reported;
- (20) There have been many reports of employees who report their suspicions of money laundering being subjected to threats or harassment; although the Community Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering system; Member States should be aware of this problem and should do whatever they can to protect employees from such harassment;

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- (21) Money laundering and terrorist financing are international problems and the effort to combat them must be global; where Community credit and financial institutions have branches and subsidiaries located in third countries where the legislation in this area is deficient, they should apply the Community standard or notify the competent authorities if this is impossible;
- (22) It is important that credit and financial institutions should be able to respond rapidly to requests for information from the authorities on whether they maintain business relations with named persons; the ability to respond to such requests should be made an obligation under Community legislation;
- (23) In order to maintain the mobilisation of the institutions and others subject to Community legislation in this area feedback should be made available to them on the usefulness and results of the reports they present; to make this possible Member States should keep and improve the relevant statistics;
- (24) In view of the very substantial amendments that need to be made to the amended Directive, it is considered preferable, for reasons of clarity and legibility, to repeal that Directive and replace it with a new self-standing text,

HAVE ADOPTED THIS DIRECTIVE:

Definitions

Article 1

For the purpose of this Directive:

(A) “Credit institution” means a credit institution, as defined in Article 1(1) first subparagraph of Directive 2000/12/EC⁸ and includes branches within the meaning of Article 1(3) of that Directive located in the Community of credit institutions having their head offices inside or outside the Community;

(B) “Financial institution” means:

1. An undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list set out in Annex I to Directive 2000/12/EC; these include the activities of currency exchange offices (bureaux de change) and of money transmission/remittance offices;
2. An insurance company duly authorised in accordance with Directive 79/267/EEC⁹, insofar as it carries out activities covered by that Directive;
3. An investment firm as defined in Article 1(2) of Directive 93/22/EEC¹⁰;
4. A collective investment undertaking marketing its units or shares;

This definition of financial institution includes branches located in the Community of financial institutions whose head offices are inside or outside the Community;

(C) “Insurance intermediary” means an insurance intermediary as defined in Article 2(3) of Directive 2002/92/EC¹¹ ;

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- (D) “Money laundering” means the following conduct when committed intentionally:
- the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
 - the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
 - the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
 - participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing indents.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.

(E) “Property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.

(F) “Criminal activity” means any kind of criminal involvement in the commission of a serious crime.

Serious crimes are, at least:

- - any of the offences defined in Article 3(1)(a) of the Vienna Convention;
- - the activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA¹²;
- - fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests¹³;
- - corruption;
- all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

Member States may designate any other offence as a criminal activity for the purposes of this Directive;

(G) “Terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, unlawfully and wilfully, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA;

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(H) 'Beneficial owner' means:

1. the natural person(s) who own(s) or control(s) directly or indirectly 10 % or more of the shares of a legal person, not being a company listed on an official stock exchange;
2. the natural person who directly or indirectly is beneficiary to 10 % or more of the property of a legal person or a trust, not being a company listed on an official stock exchange; or
3. the natural person(s) on whose behalf a transaction or activity is being conducted.

(I) "Trust and company service providers" means any natural or legal person which as a business provides any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- Acting as (or arranging for another person to act as) a trustee of an express trust;
- Acting as (or arranging for another person to act as) a nominee shareholder for another person;

(J) "Politically exposed persons" means:

1. Natural persons who may involve a reputational risk and who are or have been entrusted with prominent public functions, such as Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials and
2. Close family members or close associates of persons referred to under 1;

(K) "Competent authorities" means the national authorities empowered by law or regulation to supervise the activity of any of the institutions, persons or other businesses subject to this Directive;

(L) "Financial Intelligence Unit" means a central, national unit which, in order to combat money laundering and terrorist financing, is responsible for receiving, and to the extent permitted, requesting, analysing and disseminating to the competent authorities, disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation;

(M) "Business relationship" means a business, professional or commercial relationship which is expected, at the time when the contact is established, to have an element of duration.

(N) "Shell bank" means a credit institution incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

Scope of prohibition of money laundering and terrorist financing

Article 2

Member States shall ensure that money laundering and terrorist financing as defined in this Directive are prohibited.

Coverage

Article 3

Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:

1. Credit institutions as defined in point A of Article 1;
 2. Financial institutions as defined in point B of Article 1;
- and on the following legal or natural persons acting in the exercise of their professional activities:
3. Auditors, external accountants and tax advisors;
 4. Notaries and other independent legal professionals, when their activities involve:
 - (a) assisting in the planning or execution of transactions for their client concerning the
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures;
 - (b) or acting on behalf of and for their client in any financial or real estate transaction;
 5. Trust or company service providers not already covered under 3 or 4 above;
 6. Insurance intermediaries, when they act in respect of life insurance and other investment related insurance;
 7. Real estate agents;
 8. Dealers and auctioneers in high-value goods, whenever payment is made in cash, and in an amount of €15 000 or more;
 9. Casinos.

Article 4

Member States shall ensure that the provisions of this Directive are extended in whole or in part to institutions or persons, other than those listed in Article 3, which engage in activities which are particularly likely to be used for money-laundering or terrorist financing purposes.

Customer identification and verification (customer due diligence)

Article 5

1. Member States shall not permit their credit and financial institutions to keep anonymous accounts, anonymous passbooks or accounts in fictitious names.
2. Member States shall ensure that the institutions and persons subject to this Directive apply customer due diligence procedures on the basis of reliable independent source documents or data when:
 - (i) establishing a business relationship;
 - (ii) carrying out occasional transactions amounting to €15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
 - (iii) there is a suspicion of money laundering or terrorist financing;
 - (iv) there are doubts about the veracity or adequacy of previously obtained customer identification data.
3. Customer due diligence procedures shall comprise:
 - (a) Identifying the customer and verifying the customer's identity;

- (b) Identifying the beneficial owner and taking reasonable measures on the basis of a risk-based approach to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include taking reasonable measures to understand the ownership and control structure of the customer;
 - (c) Obtaining information on the purpose and intended nature of the business relationship;
 - (d) Conducting, on the basis of a risk-based approach, ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds.
4. With regard to the service of money transmission referred to in number 4 of the list set out in Annex I to Directive 2000/12/EC, the special provisions on customer identification set out in Regulation (giving effect to FATF Special Recommendation VII) shall apply.

Article 6

1. Member States shall require that the institutions and persons subject to this Directive apply customer due diligence before or during the course of establishing a business relationship or executing a transaction for occasional customers.

2. Member States shall require that, where the institution or person is unable to comply with paragraphs (a) to (c) of Article 5(3), it should not open the account, establish a business relationship or perform the transaction, or should terminate the business relationship, and should consider making a report to the financial intelligence unit in accordance with Article 12 in relation to the customer.

Member States shall require that institutions and persons under Article 3 apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on the basis of materiality and risk.

Article 7

Member States shall require that all casino customers shall be identified if they purchase or exchange gambling chips with a value of €1000 or more.

Casinos subject to State supervision shall be deemed in any event to have satisfied the customer identification obligation if they register and identify their customers immediately on entry, regardless of the amount of gambling chips purchased.

Simplified customer due diligence

Article 8

1. By way of derogation from Article 5(2) and (3) and Article 6(2), Member States may, in circumstances where they consider the risk of money laundering or terrorist financing low, or where information on the identity of the customer and the beneficial owner of a customer is publicly available, or when adequate checks and controls exist elsewhere in national systems, allow the institutions and persons subject to this Directive to apply simplified or reduced measures when applying customer due diligence such as:

- (a) Credit and financial institutions, where they are subject to requirements to combat money laundering and terrorist financing consistent with this Directive and equivalent international standards and are supervised for compliance with those controls;

- (b) Public companies that are subject to regulatory disclosure requirements;
 - (c) Government administrations or enterprises;
 - (d) The beneficial owners of pooled accounts held by notaries and other independent legal professionals referred to in Article 3(5).
2. Member States may also allow simplified or reduced customer identification measures for certain low risk products or transactions such as:
- (a) Life insurance policies where the annual premium is no more than €1000 or the single premium is no more than €2500;
 - (b) Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
 - (c) A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.
3. Simplified or reduced customer due diligence measures may not be applied where there is any suspicion of money laundering or terrorist financing or where specific higher risk scenarios apply.
4. Member States shall notify to the Commission all the cases where they allow simplified or reduced customer due diligence measures. The Commission will make these notifications available to the Committee provided for in Article 25.

Enhanced customer due diligence

Article 9

1. Member States shall ensure that the institutions and persons subject to this Directive take specific and adequate measures necessary in situations where there is a high risk of money laundering or terrorist financing inherent and in particular in the following situations:
- (a) When the customer has not been physically present for identification purposes (non-face to face operations);
 - (b) Cross-frontier correspondent banking relationships;
 - (c) Relations with politically exposed persons;
 - (d) Complex or unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose.
2. Member States shall prohibit the credit institutions subject to this Directive from entering into or continuing a correspondent banking relationship with a shell bank.
3. Member States shall ensure that the institutions and persons subject to this Directive pay special attention to any money laundering or terrorist financing threat that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering or terrorist financing schemes.

Introduced business

Article 10

1. Member States may permit the institutions and persons subject to this Directive to rely on introducers to perform the requirements laid down in Article 5(3)(a) to (c), provided that the following requirements are fulfilled:
- (a) The ultimate responsibility remains with the institution or person subject to this Directive relying on the introducer;
 - (b) Only institutions and persons equivalent to those listed in Article 3 which apply customer due diligence measures and record keeping measures equivalent to those laid

down in this Directive and whose compliance with the requirements of this Directive are monitored in accordance with Article 23(3) or which are situated in a third country which imposes, in the opinion of the relevant Member State, equivalent requirements to those laid down in this Directive, may qualify as introducers;

(c) Introducers should make information on the requirements laid down in Article 5 (3) (a) to (c) immediately available to the institution or person to which the customer is being referred;

(d) Relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner should immediately be forwarded by the introducer to the institution or person to which the customer is being referred on request.

2. Each Member State shall in any case permit its institutions and persons subject to this Directive under Article 3(1 to 6) to recognise and accept the customer identification procedures carried out in accordance with this Directive by an institution or person subject to this Directive under Article 3(1 to 6) in another Member State even if the documents or data on which the identification has been based are different to those required in the Member State to which the customer is being referred.

3. This article does not apply to outsourcing or agency relationships.

Reporting of suspicions indicating money laundering or terrorist financing **General**

Article 11

Member States shall require that the institutions and persons subject to this Directive examine with special attention any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing.

Article 12

1. Each Member State shall establish a financial intelligence unit.

2. Member States shall require that where an institution or person subject to this Directive suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being committed or attempted the institution or person as well as its directors and employees shall cooperate fully with the appropriate authorities:

(a) by so informing the financial intelligence unit on their own initiative, directly and promptly; and

(b) by promptly furnishing the financial intelligence unit, at its request, with all necessary further information, in accordance with the procedures established by the applicable legislation.

3. The information referred to in paragraph 2 shall be forwarded to the financial intelligence unit of the Member State in whose territory the institution or person forwarding the information is situated. The person or persons designated in accordance with the procedures provided for in Article 22(1)(a) shall normally forward the information.

4. In the case of the notaries and other independent legal professionals referred to in Article 3(5), Member States may designate an appropriate self-regulatory body of the profession concerned as the authority to be informed in accordance with paragraph 2(a) and in such case shall lay down the appropriate forms of co-operation between that body and the financial intelligence unit.

5. Member States shall not be obliged to apply the obligations laid down in paragraph 1 to notaries, independent legal professionals, 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 proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Article 13

Member States shall ensure that the institutions and persons subject to this Directive refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have informed the financial intelligence unit. The financial intelligence unit may, under conditions determined by the national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering or terrorist financing operation, the institutions and persons concerned shall apprise the financial intelligence unit immediately afterwards.

Article 14

1. Member States shall ensure that if, in the course of inspections carried out in the institutions and persons subject to this Directive by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering or terrorist financing, they should inform the financial intelligence unit.
2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the financial intelligence unit if they discover facts that could constitute evidence of money laundering or terrorist financing.

Prohibition of tipping-off

Article 15

The institutions and persons subject to this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the financial intelligence unit in accordance with Article 12 or that a money laundering or terrorist financing investigation is being carried out. Where independent legal professionals, notaries, auditors, accountants and tax advisors, acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the preceding paragraph.

Liability

Article 16

The disclosure in good faith to the financial intelligence unit by an institution or person subject to this Directive or by an employee or director of such an institution or person of the information referred to in Articles 12 and 13 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

Protection of employees

Article 17

Member States shall take all appropriate measures in order to protect employees of the institutions or persons subject to this Directive who report suspicions of money laundering either internally or to the financial intelligence unit from being exposed to threats or hostile action.

Record keeping and statistical data

Article 18

Member States shall ensure that the institutions and persons subject to this Directive keep the following for use as evidence in any investigation into money laundering or terrorist financing:

- in the case of the customer due diligence process, a copy or the references of the evidence required, for a period of at least five years after the relationship with their customer has ended,
- in the case of business relationship and transaction records, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions or the termination of the business relationship.

Article 19

Member States shall require the institutions subject to this Directive to apply to the extent possible the obligations of this Directive with regard to customer due diligence and record keeping in their branches and majority owned subsidiaries located outside the European Union in countries where the local legislation on the prevention of money laundering and terrorist financing is deemed to fall below the level set by this Directive. Where such application is impossible, Member States shall require their institutions to inform the relevant competent authorities accordingly.

Article 20

Member States shall take the necessary measures to ensure that their credit and financial institutions are able to respond fully and rapidly to enquiries from the financial intelligence unit, or from other authorities in accordance with national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of the business relationship.

Article 21

Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering and terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems. Such statistics should at a minimum cover the number of reports made to the financial intelligence unit and to the extent possible should demonstrate the subsequent use made of and results obtained from these reports.

Internal procedures, training and feedback

Article 22

1. Member States shall ensure that the institutions and persons subject to this Directive:
 - (a) establish adequate **policies and** procedures of **customer due diligence, reporting, record keeping**, internal control, **risk management** and communication in order to forestall and prevent operations related to money laundering **or terrorist financing**;
 - (b) take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering **or terrorist financing** as well as to instruct them as to how to proceed in such cases. Where a natural person falling within any of the categories listed in Article 3(3) to (8) undertakes his professional activities as an employee of a legal person, the obligations in this Article shall apply to that legal person rather than to the natural person.
2. Member States shall ensure that the institutions and persons subject to this Directive have access to up-to-date information on the practices of money launderers **or terrorist financiers** and on indications leading to the recognition of suspicious transactions.

Supervision

Article 23

1. Member States shall provide that currency exchange offices (bureaux de change), trust and company service providers must be licensed or registered and casinos be licensed in order to operate their business legally.
2. Member States shall take appropriate measures to prevent criminals or their associates from holding or being the beneficial owner of a controlling interest, holding a management function in, or being an operator of an institution or person referred to in paragraph 1.
3. Member States shall ensure that the competent authorities monitor the compliance with the requirements of this Directive by the institutions and persons subject to this Directive.
4. Member States shall ensure that the competent authorities have adequate powers, including the possibility to obtain information, and have adequate resources to perform their function.

Co-operation and consultation

General

Article 24

Member States shall ensure that financial intelligence units and competent authorities responsible for combating money laundering or terrorist financing provide the widest possible range of national and international co-operation, consistent with their respective mandates.

Contact committee

Article 25

1. A contact committee (hereinafter referred to as 'the Committee`) shall be set up under the aegis of the Commission. Its function shall be:
 - (a) without prejudice to Articles 226 and 227 of the Treaty, to facilitate harmonised implementation of this Directive through regular consultation on any practical problems arising from its application and on which exchanges of view are deemed useful;

- (b) to facilitate consultation between the Member States on the more stringent or additional conditions and obligations which they may lay down at national level;
 - (c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary, in particular to harmonise the effects of Article 4;
 - (d) to examine whether a profession or a category of undertaking should be included in the scope of Article 4 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering.
 - (e) to examine according to Article 10 in which circumstances simplified due diligence is appropriate.
 - (f) To discuss issues that are to be considered in international bodies dealing with the fight against money laundering and terrorist financing in order to develop, where necessary and possible, a coordinated position of the Member States.
2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.
 3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The secretariat shall be provided by the Commission. The chairman shall be a representative of the Commission. It shall be convened by its chairman, either on his own initiative or at the request of the delegation of a Member State.

Sanctions

Article 26

Each Member State shall take appropriate measures to ensure full application of all the provisions of this Directive and shall in particular determine the penalties to be applied for infringement of the measures adopted pursuant to this Directive.

Stricter provisions

Article 27

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering or terrorist financing.

Entry into force

Article 28

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within eighteen months of its publication. They shall forthwith inform the Commission thereof and communicate a table of equivalence between those provisions and this Directive.

When Member States adopt such measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such a reference shall be adopted by the Member States.

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 29

Within three years of the entry into force of this Directive, and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

Article 30

Directive 91/308/EEC, as amended by Directive 2001/97/EC, is hereby repealed.

Article 31

This Directive is addressed to the Member States.

Done at

*For the European Parliament
The President*

*For the Council
The President*