

**EUROPEAN ECONOMIC AREA**  
**STANDING COMMITTEE**  
**OF THE EFTA STATES**

2/00/W/065  
30 June 2000  
Brussels

**SUBCOMMITTEE II ON FREE MOVEMENT OF CAPITAL AND SERVICES**

**EEA EFTA COMMENTS ON THE PROPOSAL FOR AN EP AND COUNCIL  
DIRECTIVE AMENDING COUNCIL DIRECTIVE 91/308/EEC OF 10 JUNE  
1991 ON PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR  
THE PURPOSE OF MONEY LAUNDERING**

**EXECUTIVE SUMMARY**

**The EEA EFTA States agree with extending the types of financial institutions covered by the directive, although they would have preferred not to do it in an exhaustive manner.**

**The EEA EFTA States suggest extending the scope of the predicate crime to all “serious offences”, instead of “organised crime”.**

**The EEA EFTA States strongly urge revising whereas clauses (15) and (16) defining the concept ‘fraud, corruption or any other illegal activity damaging or likely to damage the European Communities’ financial interests more precisely.**

**The EEA EFTA States support the introduction of the new identification procedures.**

**The EEA EFTA States suggest omitting the possibility of reporting suspicious transactions to bar associations. They prefer that all reporting be to the Financial Intelligence Units.**

**I INTRODUCTION**

1. These comments are based on the Commission proposal from 14 July 1999<sup>1</sup> to amend the 1991 money laundering directive, without prejudice to the possible amendments made to it in the Council Working Group. The 1991 directive has been implemented into the national laws of the EFTA EEA States since the EEA Agreement entered into force. The EFTA EEA States are observers to the Contact Committee on Money Laundering set up by the directive. Iceland and Norway, furthermore, participate in FATF and have ratified the Vienna Convention. All the EEA EFTA States have ratified the Strasbourg Convention.

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<sup>1</sup> COM(1999)352 final

The EFTA side received a briefing on the proposal by DG Internal Market at a meeting of the Working Group on Financial Services in September 1999.

## II THE PROPOSAL

### New Article 1

#### *(A) and (B) – Definitions of ‘Credit institution’ and ‘Financial institution’*

2. The EFTA EEA States support to broaden the definition or to extend the list of credit and financial institutions covered by the directive. Drafting an exhaustive list, however, runs the risk of leaving out certain kinds of institutions or of becoming outdated due to future developments in the field of "financial institutions".

#### *(E) – Definition of ‘Criminal activity’*

3. The EEA EFTA States support in principle to broaden the scope of the directive beyond drug trafficking, which is in line with the international standard as established by the Financial Action Task Force (FATF).

4. We do, however, have the following comments to the second and third indents of this provision.

5. We find the specification "organised crime" unclear, considering that that concept has not been defined. We, therefore, suggest extending the scope of the predicate crime to all "serious offences" in conformity with the FATF recommendations.

6. Likewise, we do not find the concept "fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests" sufficiently clear. Therefore, we strongly urge that whereas clauses (15) and (16) be revised so as to attempt to define that concept more precisely.

### New Article 2a

7. The EEA EFTA States suggest extending the duty to report beyond financial institutions to all persons, who act as financial intermediaries, instead of listing professions. Financial intermediaries are all persons who on a professional basis accept, keep on deposit or help invest or transfer assets belonging to third parties. If a list of actions were to be defined, Article 2a should concern all legal or natural persons, but not only notaries and independent legal professionals.

8. According to the Commission's proposal, lawyers would be exempted from reporting requirement in any situation connected with the representation or defence of clients in legal proceedings because of their particular status and duty of confidentiality.

It should be evaluated whether or not the draft meets the need for lawyers' confidentiality with this approach.

9. We, therefore, reiterate our position not to list specific actions of notaries and other independent legal professions. These professions should rather fall under the directive to the extent that they act as financial intermediaries<sup>2</sup>.

### **New Article 3**

10. The EEA EFTA States support the introduction of the new identification procedures.

11. We do, however, have some doubts as to whether the proposal sufficiently takes into consideration the complexity that lies potentially in non face-to-face operations with the inevitable increase of new technologies such as internet banking with electronic signatures or electronic money.

### **New Article 6**

12. As suggested with regard to Article 2a the EEA EFTA States prefer the legal professions to fall under the directive in the event that they serve as a financial intermediary, rather than listing certain actions. If a lawyer or notary is a financial intermediary he/she should not be treated differently than any other financial intermediary, i.e. suspicious transactions should be reported to one centralised Financial Intelligence Unit. It is important to limit the number of institutions/persons involved in combating money laundering. This is both due to confidentiality issues and experience that has shown that it takes time and training for people to understand the scope and procedures for preventing and detecting money laundering. It is thus important to limit the number of bodies involved in detecting money laundering.

13. Consequently we suggest deleting Paragraph (3) (1)

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<sup>2</sup> The question on whether lawyers should be included or not, has not been evaluated on a broad basis in Norway, but is under consideration. Norway does therefore not have a final position on whether and, eventually, how to broaden the duty to report beyond financial institutions.