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Position paper

**on the 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**

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General comments on the role of the financial industry in the fight against money laundering, terrorist financing and financial crime

The European Commission's proposal for a Fourth Anti-Money Laundering Directive, published on 5 February 2013, takes into account the new 40 Recommendations of the Financial Action Task Force (FATF). The draft even goes further in a number of fields. It takes into account specificities related to the political and legal nature of the European Union and its single market.

During the past decade, the German and European banking industries have invested considerable resources in measures to combat money laundering and terrorist financing and to prevent financial crime. At present, the banking industry is by far the largest contributor to the detection of such offences. Against the backdrop of the global risks, especially after the terrorist attacks of September 2001 in the USA, the scope of the measures to prevent the laundering of drug money was extended to the prevention of terrorist financing. After the review of the 40 FATF Recommendations, they now also cover tax crime and the financing of the proliferation of weapons of mass destruction.

While credit institutions have many years of experience and are well placed to assess the money-laundering risks of certain products and to identify certain suspicious patterns of account movements, they rely to a considerable extent on external and independent sources of information (such as, for example, publicly accessible databases and company registers) in order to assess certain risk factors linked to (i) customer profiles or (ii) the ownership structure of legal entities and (iii) the beneficial owners of such entities. Past experience permits the conclusion to be drawn that the fight against money laundering, terrorist financing and financial crime can succeed only if public authorities promote greater transparency concerning information on corporate ownership structures and beneficial owners, and provide requisite support to the private sector. Successful cooperation with public authorities also necessitates that the authorities publish information on politically exposed persons (PEPs), as well as on countries that fail to implement equivalent standards to combat money laundering and terrorist financing.

Moreover, the process of customer risk identification and reporting of suspicious transactions to financial intelligence units and police authorities requires adequate employee protection from possible threats by criminals. Another essential prerequisite for combating money laundering and terrorist financing would be the inclusion of a provision exceptionally granting express permission for institution staff working in anti-money laundering and compliance to analyse and exchange customer information relevant for combating money laundering and terrorist financing without restrictions through data protection rules, which have been designed mainly to avoid the use of confidential customer data for commercial purposes. It is also of paramount importance that these staff members receive concrete feedback from law enforcement authorities on the cases of suspicious transactions which they have reported so that they are able to take the necessary steps to optimise their internal control and risk management systems and to protect the integrity of the financial institution. Also the rules on customer due diligence should be proportionate and reflect the different levels of risk of customers and financial institutions' business models.

The German Banking Industry Committee¹ wishes to make the following detailed comments on the European Commission's key proposals:

A. Priority issues

1. New requirements for beneficial ownership identification and verification (Articles 3(5), 11 and 29).

Content:

The revised Directive proposes new measures to provide enhanced clarity and **accessibility of beneficial ownership information**. It requires legal persons to hold information on their own beneficial ownership. This information should be made available to both competent authorities and obliged entities.

Position of the German Banking Industry Committee:

In the view of the German Banking Industry Committee, the obligations concerning the identification of beneficial owners are the most challenging element of the customer due diligence requirements imposed by the Directive. The Directive defines 'beneficial owners' as natural persons controlling at least 25% of the property plus one share or the voting rights of a legal entity. For the purposes of implementation, it should be borne in mind that cases of multi-layered corporate structures, in which natural persons as ultimate beneficial owners do not directly hold any shares in the corporation, are the cases in which the obligation to identify the beneficial owners proves to be very difficult to comply with.

Consequently, clear rules are necessary to integrate the nature and scope of the data which the addressees of the Directive are to gather into the communication of these data. In fact, the EU has already laid the groundwork in this area by adopting Directive 2012/17/EU of 13 June 2012 on the interconnection of central, commercial and company registers and by promoting a European Business Register project providing company information directly from each participating country's official register on an online basis.² This must be built on.

Against this backdrop, the German Banking Industry Committee does not understand why the European Commission has failed to incorporate standards concerning transparency and beneficial ownership of legal persons, as set out in Recommendation 24 of the 40 FATF recommendations and its interpretative note, into the text of the proposed Fourth Anti-Money Laundering Directive. It is imperative that the EU ensures robust implementation of these standards for the following reasons: While companies could be obliged to report beneficial owner information to registers and could count on being sanctioned by the competent authorities for non-compliance, credit institutions, as obliged entities, do not have any means to ensure

¹ The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband der Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

² See <http://www.ebr.org/>.

cooperation of companies. Moreover, corporate customers that are part of a multi-layered corporate structure either themselves do not have knowledge of the entire ownership structure and the beneficial owners involved or may simply refuse to share such information with financial institutions. This is confirmed by the experience of financial institutions in Member States which have already introduced customer cooperation requirements similar to those now proposed by the Commission.

This failure too can be remedied by a comprehensive register.

In the view of the German Banking Industry Committee, new reporting requirements for non-listed companies and publicly accessible data maintained in EU-wide interconnected national company registers are effective means for increasing the transparency of companies and combating money laundering, terrorist financing and financial crime. **The German Banking Industry Committee therefore proposes the inclusion of corresponding provisions in Article 29 of the Fourth Anti-Money Laundering Directive.**

The Fourth Anti-Money Laundering Directive should, in addition, provide a **clear-cut definition of the concept of "control"** exercised by beneficial owners. The German Banking Industry Committee welcomes that the Commission has kept the 25% threshold for direct ownership unchanged. European credit institutions widely apply a risk-based approach and the threshold of 25% prescribed by the Third Anti-Money Laundering Directive is helpful as an objective criterion. It allows institutions to obtain a clearer and appropriate picture of the control aspects pertaining to a customer from a company law perspective in cases of direct ownership. However, the Commission proposes to apply the same threshold to higher group levels too if the customer is part of a multi-layered corporate structure. It can be assumed that the FATF, like most of the anti-money laundering laws in the Member States today, provides for the 25% threshold only for direct participation. For other levels of ownership and control in the ownership chain, the FATF does not define a threshold. This implies that the understanding of the concept of "control" for indirect levels corresponds to the definition under company law. The FATF standards are also the basis for ownership thresholds in the agreements to improve tax compliance.

In the interests of the obliged entities, the definition of the concept of "control" chosen for the Fourth Anti-Money Laundering Directive should correspond to the FATF definition in order to ensure a uniform international approach.

Since, moreover, the approach chosen by the Commission holds out little prospect of success from a company law and control perspective when it comes to identifying the person(s) ultimately controlling the company and is also not in line with the FATF standards, **the German Banking Industry Committee proposes that Article 3(5) of the Fourth Anti-Money Laundering Directive should be amended accordingly.**

2. Third-country equivalence list (Article 6 in conjunction with Articles 25, 38 and 42)

Content:

The draft proposes to abolish the process relating to positive "equivalence" of third countries (so-called "white list"). As justification, the European Commission argues that customer due diligence would in future become more risk-based and as a result the use of exemptions on the grounds of purely

geographical factors becomes less relevant. Nevertheless, the Commission calls on obliged entities to take country risks into consideration in their business policy decisions.

Position of the German Banking Industry Committee:

The German Banking Industry Committee criticises the Commission's planned abolition of the white list. It considers the third-country equivalence regime and an up-to-date list to be indispensable for obliged entities, as both the current Third and the draft Fourth Anti-Money Laundering Directives (e.g. in Articles 25, 38 and 42) contain numerous references to the "third country equivalence" issue. Third-country equivalence is still considered in the new text as a geographical factor for the risk. Therefore it is of paramount importance to maintain a list of countries that can be considered everywhere in the EU as equivalent. Otherwise, separate evaluations of the third countries carried out by different national regulators risk creating confusion for the obliged entities. Having a qualitative, regularly updated list based on the joint research and analysis carried out by the Member States and the European Commission on the legal framework conditions for combating money laundering and terrorist financing in third countries provides objective criteria that institutions can integrate into their internal security measures to combat money laundering and terrorist financing. This type of information on country risk does not run counter to a successful risk-based approach by financial institutions but supports it.

It would be even more helpful if the Commission or the European supervisory authorities would switch the process to issuing a **qualified and updated "black list"** of countries that are not complying with the equivalent EU standards (comparable to the type of list issued by the FATF). This would ensure a level playing field for all obliged entities, not least with regard to a consistent approach to global business. **In the light of the above, the German Banking Industry Committee proposes amending Article 6.**

Should the EU authorities refrain from issuing the "black list" suggested above, they should at least **maintain the "white list" for third-country equivalence purposes** which would have binding effect for all Member States. Changes thereto should be introduced in a regular and orderly consultation process.

Moreover, the German Banking Industry Committee suggests expanding the scope and dynamics of the consultation process so as to be able to more swiftly include expert and practitioner assessments, including from the European banking industry, concerning existing and other/new third-country systems, with simultaneous regular updating of the list(s).

3. National and supranational risk assessments (Articles 6 and 7)

Content:

In the proposal, the European supervisory authorities are asked to carry out an assessment and provide an opinion on the money laundering and terrorist financing risks facing the EU. In addition, the European supervisory authorities are to develop guidance for Member States and financial institutions on what factors should be taken into account when applying simplified and enhanced customer due diligence and when applying a risk-based approach to supervision.

Position of the German Banking Industry Committee:

The German Banking Industry Committee welcomes the efforts to extend the risk-based approach to the work of national supervisors, including efforts to conduct national and supranational risk assessments in order to increase the awareness of potential threats faced by the banking sector as a whole. The risk-based approach is successful as it ensures appropriate handling of the risks and a corresponding allocation of the available resources. The risk-based approach has been of great benefit to financial institutions' risk analysis to combat money laundering and terrorist financing, as it could be geared towards a more focused search for risky transactions and/or customers. Therefore, it is important to take into consideration the risks prevailing in different sectors, especially those faced by smaller or specialised credit or financial institutions with less risky business models, such as leasing and consumer credit, as noted in Implementing Measures Directive 2006/70/EC. The German Banking Industry Committee would, however, like to stress that risk assessments should not lead to the creation of hard risk indicators. In particular, the listing of examples of money laundering or terrorist financing risk factors and of simplified and enhanced customer due diligence measures carries the danger of becoming hard and fast indicators in the eyes of regulators and auditors, which have to be systematically checked internally even if they are not relevant for some institutions on account of their specific business models.

It is therefore important that they remain indicative examples and are not generalised (for this reason, we are critical of the wording of Articles 14 and 16, as well as in Annexes II and III of the proposal) and that their use as indicators is not prescribed on a compulsory basis. Besides, in our opinion, the listed examples would be better placed in (national) banking industry guidance.

4. Application of customer due diligence in cases of low risk (Article 12(2))

Content:

According to Article 12(2), Member States may allow the verification of the identify of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring.

Position of the German Banking Industry Committee:

It is unclear whether establishing that there is little risk of money laundering or terrorist financing is to be made the responsibility of the obliged entity or whether a case of application of simplified due diligence pursuant to Article 13(2) must arise to be allowed to complete the aforementioned due diligence during the establishment of a business relationship. The only practicable and appropriate course is to leave this to the risk assessment of the credit institution, especially since as a result the scope of due diligence is not reduced and simplified due diligence may be applied only to a very limited extent.

5. Customer due diligence measures in an ongoing business relationship (Article 12(5))

Content:

Member States are to require that obliged entities apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, including at times when the relevant circumstances of a customer change.

Position of the German Banking Industry Committee:

Article 12(5) does not specify which customer due diligence measures are to be applied, since not all data relevant for the application of the due diligence measures, gathered during the customer registration process, will change after registration or in the course of the business relationship. The currently all-inclusive provision would lead to unnecessary and redundant work on certain elements (e.g. date of birth) that do not change. **We therefore propose amending Article 12(5) accordingly** or specifying it in concrete terms in the Annex.

6. Simplified customer due diligence (Article 15)

Content:

The revised Directive lacks examples of rules for simplified customer due diligence procedures. Instead, decisions on when and how to undertake simplified customer due diligence have to be justified by each obliged entity or each Member State for each category of simplified due diligence.

Position of the German Banking Industry Committee:

The omission of the examples of rules multiplies the effort involved in the application of simplified customer due diligence procedures even in cases which can be assessed uniformly throughout Europe, such as, for example, contractual relations with European authorities, etc. In the opinion of the German Banking Industry Committee, the provisions of the Third Anti-Money Laundering Directive regarding simplified customer due diligence should remain in force. They have – despite the very detailed regulations – proved to be helpful in identifying low-risk situations in the risk analysis context, especially when it comes to dealing with government authorities in Member States as credit institution customers. We therefore consider that Article 15 should be deleted. **Should the EU insist on deleting the examples of rules on simplified customer due diligence, the German Banking Industry Committee suggests at least amending Article 15 to include a provision that existing best practices in the EU Member States should be taken into account by the European supervisory authorities when drawing up guidelines on simplified due diligence procedures.**

7. Enhanced customer due diligence (Article 16)

Content:

The Commission proposal removes non-face-to-face business relationships as an automatic trigger for enhanced due diligence procedures and lists them instead as a factor of potentially higher risk.

Position of the German Banking Industry Committee:

With regard to enhanced due diligence, the German Banking Industry Committee welcomes the strengthening of the risk-based approach by removing the automatic application of enhanced measures to non-face-to-face business relationships. This is very important for the further development of all projects to dematerialise banking activity. On the other hand, the listing of risk factors in Annex II is not appropriate since the listing of examples of money laundering and terrorist financing risk factors and simplified and enhanced due diligence measures carries the risk of becoming hard and fast indicators in the eyes of regulators and auditors (also see on this subject the comments on “national and supranational risk assessments” above). Even in the presence of certain risk factors referred to in Annex II, the obliged entities should be permitted to rely on “qualified” documents (e.g. a notarial deed) to meet the customer due diligence requirements. **In our opinion, Article 16(4) should be deleted. Should the EU insist on mandating the European supervisory authorities regarding enhanced customer due diligence, we suggest at least amending Article 16 accordingly.**

8. New definition of politically exposed persons (PEPs) (Article 18 ff. in conjunction with Article 3(7)(b), (c) and (e))

Content:

The proposal expands the provisions on dealing with politically exposed persons (PEPs), i.e. individuals who may represent higher risk by virtue of the political positions they hold. This now covers (in addition to foreign PEPs with functions outside the EU):

- domestic PEPs (i.e. individuals who have been entrusted with an important political function in a EU Member State) and
- PEPs in international organisations. Article 3(7)(c) states that PEPs are also deemed to be “persons who are or who have been entrusted with a prominent function by an international organisation”. Essentially, this means directors, deputy directors and members of the board or equivalent function of an international organisation.

This PEP definition includes, among others, heads of State, members of government, members of parliaments and judges of supreme courts pursuant to the Implementing Directive 2006/70/EC and will now be regulated in full by Article 3(7) of the Fourth Anti-Money Laundering Directive.

Position of the German Banking Industry Committee:

The German Banking Industry Committee welcomes the recognition by the Commission that the European Union is a political union, and the definition of domestic PEPs as persons entrusted with a political

mandate by a Member State. This will allow credit institutions to take into consideration other risk factors (e.g. the level of corruption in a Member State) and thus enable them to concentrate their resources on PEPs associated with higher risks. This will allow the obliged entities at least to compensate in part for the scale of the additional administrative expenditure arising from the inclusion of the domestic PEPs in the scope of the Fourth Anti-Money Laundering Directive. However, for the sake of consistency, the term “PEPs” should be defined more precisely, as the requirement to assess a PEP on a risk-sensitive basis and to identify his or her family members and close associates represents a major challenge for the obliged entities.

We should therefore welcome it if the EU could **compile and publish a regularly updated list (at least for intra-EU PEPs)**, so that obliged entities may use it as a substantive tool to discharge their consumer due diligence obligations independently of any lists obtainable from commercial providers. A list of this kind would facilitate identification of a PEP, his or her family members and especially his or her close associates in each Member State. If the EU authorities are not in a position to provide a PEP list with the names of the persons entrusted with a prominent function, the Directive should at least include an annex containing **a list of relevant functions/categories of politically exposed persons in the EU and in every Member State**.

Further, the definition of “**partners**” in Article 3(7)(e)(ii) should be realigned with the scope of the Third Anti-Money Laundering Directive by taking due account of national specificities existing in the Member States. Also the **definition of “international organisations”** should be clarified to avoid it covering all private organisations operating internationally.

9. Data protection (Article 42)

Content:

The draft Fourth Anti-Money Laundering Directive contains provisions that aim to clarify the relationship between obligations to combat money laundering and terrorist financing on the one hand and **data protection** obligations on the other. In addition, the recent proposal of the European Commission to modernise the EU legal framework for personal data protection tries to provide further clarifications concerning some of the complex issues with a direct impact on credit institutions and their compliance with the requirements to combat money laundering and terrorist financing. The draft Fourth Anti-Money Laundering Directive recognises the need to strike a balance between establishing robust systems, controls and preventative measures against money laundering and terrorist financing on the one hand, and protecting the rights of data subjects on the other. The proposal further claims to be fully in line with the Commission's recent data protection proposals (currently discussed in the European Parliament), whereby a specific provision (Article 21 of the draft Data Protection Regulation) empowers the EU or Member States to adopt legislation to restrict the scope of the obligations and rights provided for in the draft Regulation on a number of specified grounds, including the prevention, investigation, detection and prosecution of criminal offences.

Position of the German Banking Industry Committee:

The German Banking Industry Committee considers that obviously conflicting objectives and requirements exist between anti-money laundering and data protection legislation. On the one hand, customer due

diligence requires the collection of all necessary data to ensure valid information about the customer and his or her transactions in order to prevent the business relationship and the credit institution from being misused for money laundering and/or terrorist financing purposes. On the other hand, collecting information which is adequate, relevant and not excessive for the processing of data for the agreed purpose is an acknowledged principle of protecting customer data. Being able to process customer data with legal certainty is crucial for the financial industry in the EU. However, given that both legal instruments are being revised at the same time, it is important that the legislative framework for the financial sector is clear and consistent with regard to how to act from the point of view of compliance risk management, which requires elimination of possible inconsistencies between EU data protection law and the requirements of the Fourth Anti-Money Laundering Directive and other national, European and international regulations or standards.

10. Feedback (Article 43(3))

Content:

The draft requires Member States to ensure that, whenever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided.

Position of the German Banking Industry Committee:

The Commission proposal falls short of the requirements to strengthen the feedback clause. The German Banking Industry Committee regards the wording of the feedback obligation pursuant to the new Article 43 as too non-committal. **Therefore the wording of Article 43(3) should be amended to make the feedback obligation of the competent authorities binding in relation to obliged entities.**

B. Further issues (in article order):

1. Scope – Real estate agents and letting agents (Article 2(1)(3)(d))

Content:

According to Article 2(1)(3)(d) of the proposal, real estate agents are also considered as obliged entities within the meaning of the Directive without any differentiation in their concrete activities. Moreover, in contrast to the Third Anti-Money Laundering Directive, the scope is to include letting agents as well.

Position of the German Banking Industry Committee:

The proposal does not consider that the activity of real estate agents differs widely from one EU Member State to another and that real estate agents are therefore exposed to the risk of being implicated in money laundering activities to very different degrees. For example, the task of real estate agents in

Germany consists only in bringing together real estate buyers and sellers and working towards the conclusion of a purchase contract. However, the formal conclusion of the contract and the financial transactions between buyer and seller associated with the transfer of title to the property must be undertaken before a notary who also checks the identity of the parties to the contract pursuant to the anti-money laundering legislation. Therefore, it is not clear what concrete money laundering activities could be identified through the application of due diligence by real estate agents, especially through identification of the customer. The situation is different, however, for real estate agents in other Member States who not only bring together the interested parties, but also themselves (like the notaries in Germany) arrange the financial transactions associated with the transfer of title to the property (notably payment of the purchase price). That is why a differentiation for the varying fields of activities of real estate agents in different Member States should be included into the Fourth Anti-Money Laundering Directive.

Concerning the activity of letting agents in particular, it is difficult to determine at which point in time it is to be assumed that a business relationship is established with an interested party (can a business relationship already be assumed when an interested party only visits rental accommodation?). Further, it is highly questionable if, by identifying the parties to the letting transaction, any relevant findings can be made at all of a nature to prevent money laundering activities (except in the luxury segment). The German Banking Industry Committee therefore advocates refraining from including letting agents in the scope of the Directive or at least providing for a correspondingly high threshold. **The article should be amended accordingly.**

2. Role of EBA, ESMA and EIOPA in further specification of the rules (Article 42(5), Article 47 and Article 57(3))

Content:

The European Banking Authority (hereinafter "EBA"), European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") and European Securities and Markets Authority (hereinafter "ESMA") are to be empowered to develop draft regulatory technical standards specifying the type of additional measures (for cases when a credit institution based in a third country affiliated to a financial group is prevented from applying group policies) to effectively handle the risk of money laundering or terrorist financing. If the additional measures are not sufficient, competent authorities in the home country shall consider additional supervisory actions, including, as appropriate, requesting the financial group to close down its operations in the host country. The European supervisory authorities are also to help national authorities to cooperate. Finally, they are to issue guidelines on the type of administrative measures and sanctions and the level of administrative pecuniary sanctions applicable to obliged entities.

Position of the German Banking Industry Committee:

The German Banking Industry Committee points out that tasks to be conferred on EBA, EIOPA and ESMA should not lead to any regulatory overlap or unnecessary duplication of proven standard-setting processes and not abolish specific national standards, but, where appropriate, serve solely as an "umbrella" over them.

3. Correspondent banking relationships (Article 17)

Content:

The Commission proposes that, in respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States should apply enhanced due diligence measures.

Position of the German Banking Industry Committee:

In the opinion of the German Banking Industry Committee, respondent institutions from third countries with regimes to combat money laundering and terrorist financing based on the list of 40 FATF recommendations should not be subject to enhanced customer due diligence measures as a matter of course, as this would defeat the purpose of a risk-based approach. **The German Banking Industry Committee therefore suggests that Article 17 be amended accordingly.**

4. Time limit for application of enhanced due diligence to former politically exposed persons (Article 22)

Content:

According to Article 22, obliged entities are to continue to apply appropriate and risk-sensitive enhanced customer due diligence measures for a period of 18 months after the entrustment with a prominent public function has come to an end.

Position of the German Banking Industry Committee:

The German Banking Industry Committee welcomes the time limitation of the duty to apply enhanced customer due diligence to former politically exposed persons. However, a period of 18 months is considered to be excessive and would require disproportionately increased administrative efforts by the obliged entities. In some Member States, a period of twelve months has already proved to be sufficient and practicable and has already become established.

5. Performance by third parties (Articles 24 and 26)

Content:

The draft Directive limits the calling in of third parties to meeting the requirements laid down in Article 11(1)(a) to (c).

Position of the German Banking Industry Committee:

The restriction to individual obligations from the list of "normal" due diligence measures and therefore the exclusion especially of enhanced due diligence measures and therefore the obligations associated with PEPs is not in keeping with the structure of the due diligence measures in the Directive. Under Article 18,

as “enhanced due diligence”, it must be possible to identify politically exposed persons with appropriate procedures in **every** customer relationship. Only where the customer or beneficial owner has PEP status are further (in fact enhanced) customer due diligence obligations to be met (Article 18(b) to (d)). **Also given that, according to Article 24, the ultimate responsibility for meeting all requirements – whether transferred to third parties or not – remains with the obliged entity, we propose a corresponding amendment to Articles 24 and 26(1).**

6. Protection of employees of the obliged entity (Article 37)

Content:

The draft Directive provides that Member States take appropriate measures to protect employees of obliged entities under the Anti-Money Laundering Directive from being exposed to threats especially from reported persons and other criminals.

Position of the German Banking Industry Committee:

The employee protection approach is to be welcomed, as in the past there have been repeatedly been threats to anti-money laundering officers and other employees listed on suspicious transaction reports. It is therefore proposed that Article 37 should be supplemented to provide that – for the protection of the employees of the obliged entities – suspicious transaction reports do not require a reporting person or signature but can be “signed” by just a company stamp or a numerical code made known to the FIU in advance as identifier.

7. Cooperation among financial intelligence units and access to business relationship information (Article 40)

Content:

The Commission proposal strengthens the cooperation between the different financial intelligence units (FIUs) whose tasks are to receive, analyse and disseminate to competent authorities reports about suspicions of money laundering or terrorist financing. Article 40 provides that Member States require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, 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 that relationship.

Position of the German Banking Industry Committee:

The German Banking Industry Committee understands the interest of authorities to have mechanisms in place to identify in timely manner whether natural or legal persons hold or control accounts. However, it is important that the accessible information does not go beyond basic account data. In addition, the period customary so far of the past three years should not be exceeded, since this would be inefficient, disproportionately costly and incompatible with the required data minimisation required under data protection law.

8. Group-wide supervision and compliance (Article 42 and Article 27)

Content:

According to the Commission proposal, Member States are to require obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for anti-money laundering and combating terrorist financing purposes. In addition, Member States are to ensure that the competent authorities of the respective home and host countries cooperate to ensure effective supervision of compliance with the provisions of the Directive.

Position of the German Banking Industry Committee:

The German Banking Industry Committee welcomes the broader interpretation of the concept of “group” and that information should be shared within a group. However, we criticise the fact that the Commission proposal does not provide for any rules as to which information (list of politically exposed persons, reports of suspicions, etc.) can be shared for the purpose of combating money laundering, terrorist financing and financial crime, and who can have access to the information within the group (e.g. compliance officers).

We also welcome the provisions in Article 27 pursuant to which supervisory powers are clarified and measures/mechanisms to avoid home-host conflicts and to promote efficient cooperation between Member State authorities in cross-border situations are effectively addressed.

9. Harmonisation of sanctions (Article 55 ff.)

Content:

The Commission proposes the further harmonisation of administrative sanctions: Member States are to ensure that administrative sanctions are available for systematic breaches of key requirements, including customer due diligence, record keeping, suspicious transaction reporting and internal controls.

Position of the German Banking Industry Committee:

The German Banking Industry Committee welcomes the reference to “systemic breaches”, but generally considers the proposed sanctions to be too severe, especially given that standard orders are at times imprecise.

10. Whistleblowing procedure requirement (Article 58(3))

Content:

The Commission proposes that Member States require obliged entities to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and anonymous channel.

Position of the German Banking Industry Committee:

Many credit institutions already have established so-called “whistleblowing” procedures. However, it should be borne in mind that the issue is highly sensitive. The success and efficiency of such procedures depend essentially on the socio-cultural environment, historical context and the corporate culture within which these systems are established. In the view of the German Banking Industry Committee, the EU should refrain from introducing a binding requirement and leave it to the discretion of Member States and individual institutions to establish whistleblowing systems. If adopted, the whistleblowing requirement of Article 58(3) should be drafted in line with the provisions of the new Article 70 of CRD IV and should not lead to any duplication of obligations for credit institutions. The provisions should be proportionate and take into consideration the size and complexity of obliged entities.

11. List of recognised identity documents (additional proposal for improvement):

The German Banking Industry Committee suggests including a harmonised list, to be drawn up by the Member States, of identity documents (or categories thereof) recognised EU-wide in an Annex to the future revised Directive. In this connection, we refer to the Council PRADO database, which could provide useful guidance for compiling such a list. The list would considerably facilitate risk-based customer identification by credit institutions, including in a cross-border context, and would permit the use of the listed identity documents in each Member State – even if some characteristics do not correspond to the national provisions on identity documents.

A list of identity documents recognised EU-wide drawn up by the Member States should, however, observe the following criteria:

- The list should contain only existing documents drawn up by the Member States and not aim to harmonise national identity documents or to introduce new requirements concerning them.
- The list should not be exhaustive in order to give Member States the chance to recognise new documents at their discretion and to avoid a document used at national level for the purposes of combating money laundering not being recognised because it is not included in the list. We should like to point out that a system in which the Member States inform the Commission about the documents used in each case could create legal uncertainty for credit institutions if a Member State were to fail to forward information on its documents to the Commission.
- The list should, however, only deal directly with the identity documents and not with the associated biometric data.