CCBE

CONSEIL DES BARREAUX DE L'UNION EUROPÉENNE RAT DER ANWALTSCHAFTEN DER EUROPÄISCHEN UNION CONSEJO DE LOS COLEGIOS DE ABOGADOS DE LA UNIÓN EUROPEA CONSIGLIO DEGLI ORDINI FORENSI DELL'UNIONE EUROPEA **R**AAD VAN DE BALIES VAN DE EUROPESE UNIE CONSELHO DAS ORDENS DE ADVOGADOS DA UNIÃO EUROPEIA SYMBOYΛIO ΤΩΝ ΔIKHΓORIKΩN ΣYΛΛOΓΩN ΤHΣ EYPΩΠAIKHΣ ENΩΣHΣ RADET FOR ADVOKATERNE I DEN EUROPAEISKE FAELLESKAB EUROOPAN UNIONIN ASIANAJAJALIITTOJEN NEUVOSTO RÁÐ LÖGMANNAFÉLAGA Í EVRÓPUSAMBANDINU RÅDET FOR ADVOKATFORENINGENE I DET EUROPEISKE FELLESSKAP RÅDET FOR ADVOKATSAMFUNDEN I DEN EUROPEISKA UNIONEN **COUNCIL OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN UNION**

ACTION POINTS FOR EU BARS AND LAW SOCIETIES ON THE IMPLEMENTATION OF THE MONEY LAUNDERING DIRECTIVE

Action Points for EU Bars and Law Societies on the implementation of the Money Laundering Directive

Introduction

The European Parliament and Council of Ministers agreed in November 2001 on a text for amending the Money Laundering Directive ("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").

According to Article 3 of the 2001 Directive, "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 June 2003 at the latest". The CCBE's Task Force Anti-Crime believes that many Member States will commence the implementation process before the expiration of the 18-month period. This is already the case in some Member States, where governments are currently in the process of actively implementing the terms of the agreed text into national law.

The 2001 Directive provides that in a number of important areas, Member States will have a discretion as to whether or not to implement certain provisions into national law. The purpose of these Action Points, therefore, is to draw attention to those areas where particular vigilance needs to be exercised in order that Bars and Law Societies will be in a position to lobby national governments to exercise the discretions in a co-ordinated way across the EU.

The Task Force would, therefore, encourage each Bar and Law Society to:

(a) inform the CCBE Secretariat (mcnamee@ccbe.org) of any developments on the implementation process in their Member State;
(b) bring to the attention of the CCBE Secretariat any guidelines which national Bars may have developed for their members; and
(c) convey to their governments the importance of adopting a harmonised and sensible approach in implementing the Directive in accordance with the following Action Points.

The 1991 Directive and the 2001 Directive are attached to these Action Points as annexes.

For further information on the Directive and its implementation, please contact the CCBE Secretariat at:

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ACTION POINT I

Reporting Obligations

Article 6.3 (second paragraph) of the 2001 Directive provides that Member States are not obliged to exempt lawyers from reporting suspicious transactions in 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 that client for the purpose of judicial proceedings:-

Article 6.3 (second paragraph)

> *"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".*

It is vital that the discretion reserved to Member States in this paragraph is exercised by national governments in a way that practitioners will be exempted from the obligation to report suspicious transactions on the terms set out in the paragraph.

ACTION POINT II

The expression "ascertaining the legal position"

There are two aspects relating to this expression which may have an impact on implementation, one relating to the inclusion of legal advice and the other to the extent of a lawyer's knowledge of the client's circumstances.

(a) Legal Advice

One of the most contentious issues which arose during the passage of the 2001 Directive was in connection with the interpretation of the words "ascertaining the legal position for their client", and whether these words could be interpreted as including legal advice. It will be noted that in recital (l7) of the 2001 Directive the following statement appears in connection with the proposed exemptions:-

Recital 17

> *"However, where independent members of professions providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate under the Directive to put these legal professionals in respect of these activities under an obligation to report suspicions of money laundering. There must be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client. Thus, legal advice remains subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering activities, the legal advice is provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes".*

Although the wording of Article 6.3., second paragraph (quoted on page 3), does not specifically refer to legal advice, it is essential in order to maintain consistency throughout the EU that Member States' implementing legislation should make it clear that legal advice is so included, subject to the conditions referred to in recital (l7) of the agreed text. Accordingly, Bars and Law Societies when consulting with their National Governments should as a matter of priority seek to ensure that national legislation is expressed in this way.

(b) Knowledge

Care should be taken to ensure that the qualifications to legal advice are expressed in precisely the same way as set out in recital (l7) above. Thus national legislation should make it quite clear that the knowledge of the lawyer that the client is seeking legal advice for money laundering purposes is actual knowledge and is not to be implied.

Attention is drawn to the definition of "Money Laundering" at Article l (C) where the expression "knowing that such property is derived from criminal activity" is used. The definition includes the statement that "Knowledge, intent or purpose required as an element of the above mentioned activities may be inferred from objective factual circumstances." This is a different test to the one outlined in recital (17).

Article 1 (C)

"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 above-mentioned 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."

Therefore, knowledge in this context (i.e. of money laundering activities) should not be confused with knowledge that the client is seeking legal advice for money laundering activities (recital (17). Any attempt to further qualify actual knowledge by reference to the provision in the definition of money laundering must be strongly resisted.

ACTION POINT III

Information for other purposes

Previously, it was the desire of the Commission and the Council that Article 6 would contain a further paragraph authorising Member States to use information received for any other purpose:-

Proposed Article 6 (4) – now deleted

> *"Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes."*

The proposed paragraph has now been deleted. **However, National Bars should ensure that Member States do not re-introduce this provision when implementing the 2001 Directive into national law. This is in order to ensure that different rules do not apply across the EU on information obtained for the purpose of combating money laundering, and secondly, to ensure that clients and lawyers are clear that the same rules apply in each Member State.**

ACTION POINT IV

Non-disclosure to client (Tipping off)

Article 8 of the 1991 Directive provides that:

> *"Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out".*

The 2001 Directive adds a second paragraph to the former Article 8, and this second paragraph provides as follows:-

Article 8 (2) (new paragraph)

> *"Member States shall not be obliged under this Directive to apply the obligation laid down in paragraph 1 to the professions mentioned in the second paragraph of Article 6(3)."*

This means in effect that Member States have the choice whether to apply the obligation for non-disclosure to clients to lawyers. Accordingly, national Bars are urged to ensure that Article 8 is not applied to lawyers in their jurisdiction. Otherwise there would be an inconsistent application of the Directive concerning the issue of non-disclosure to clients in each Member State.

ACTION POINT V

The expression "independent legal professionals"

The obligations under the 2001 Directive are to apply to "independent legal professionals".

It is not entirely clear whether this wording is to be confined to members of the regulated legal professions within the European Union only, or whether it is to include all persons who are entitled to practise law, including lawyers from jurisdictions other than the European Union who are physically present in the European Union.

The CCBE has made the point on previous occasions that in order to maintain a "level playing field" the legislation should not discriminate between various classes of lawyers, and so should cover all legal practitioners within a particular jurisdiction, including foreign lawyers.

ACTION POINT VI

Definition of "Criminal Activity"

The definition of money laundering in Article I (C) of the agreed text refers (inter alia) to the conversion or transfer of property knowing that such property is derived from "criminal activity".

Criminal activity is defined in sub-paragraph (E) as meaning any kind of criminal involvement in the commission of a serious crime. Serious crimes are also defined under paragraph (E):-

Article 1 (E)

> *"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/JHA ****;*
>
> – *fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests *****;*
>
> – *corruption;*
>
> – *an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.*
>
> *Member States shall before + amend the definition provided for in this indent in order to bring this definition into line with the definition of serious crime of Joint Action 98/699/JHA. The Council invites the Commission to present before + a proposal for a Directive amending in that respect this Directive.*
>
> *Member States may designate any other offence as a criminal activity for the purposes of this Directive".*

As can be seen from the last paragraph of (E), a further discretion is reserved to Member States insofar as Member States may "designate any other offence as a criminal activity for the purposes of the Directive".

The CCBE has always maintained that a discretion of this nature is entirely objectionable as it goes far beyond the scope and purpose of the fight against money laundering as such. National Bars and Law Societies are urged to be particularly vigilant in relation to this point in order to ensure that Member States do not exercise this discretion.

ACTION POINT VII

Role of Bar and Law Societies

Article 6.3 (first paragraph) provides that in the case of notaries and independent legal professionals, Member States may designate Bar associations or other self-regulatory bodies for independent professionals as the bodies to which reports on possible money laundering cases may be addressed by professionals.

Article 6 (3) (first paragraph)

> *"In the case of the notaries and independent legal professionals referred to in Article 2a(5), Member States may designate an appropriate self-regulatory body of the profession concerned as the authority to be informed of the facts referred to in paragraph 1(a) and in such case shall lay down the appropriate forms of cooperation between that body and the authorities responsible for combating money laundering."*

Recital (20) of the 2001 Directive states that this should be allowed in order to take proper account of professionals' duty of discretion owed to their clients:-

Recital (20)

> *"In the case of notaries and independent legal professionals, Member States should be allowed, in order to take proper account of these professionals' duty of discretion owed to their clients, to 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 by these professionals. The rules governing the treatment of such reports and their possible onward transmission to the "authorities responsible for combating money laundering" and in general the appropriate forms of cooperation between the bar associations or professional bodies and these authorities should be determined by the Member States".*

The rules governing the treatment of such reports and their possible onward transmission to the "authorities responsible for combating money laundering", and in general the appropriate forms of cooperation between the Bar associations or professional bodies and these authorities, are to be determined by the Member States.

National Bars may want to consider whether they would wish to avail of this option, in which case they would need to inform their national government accordingly.

ACTION POINT VIII

Review within three years

Bars and Law Societies are reminded that according to Article 2 of the 2001 Directive:-

> *" Within three years of the entry into force of this Directive, the Commission shall carry out a particular examination, in the context of the report provided for in Article 17 of Directive 91/308/EEC, of aspects relating to the implementation of the fifth indent of Article 1(E), the specific treatment of lawyers and other independent legal professionals, the identification of clients in non-face to face transactions and possible implications for electronic commerce."*

(11)

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. real estate agents;

5. notaries and other independent legal professionals, when they participate, whether:

   (a) by 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;

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10. Article 11 shall be replaced by the following:

'*Article 11*

1. Member States shall ensure that the institutions and persons subject to this Directive:

(a) establish adequate procedures of internal control and communication in order to forestall and prevent

ANNEX 2

COUNCIL DIRECTIVE
of 10 June 1991
on prevention of the use of the financial system for the purpose of money laundering
(91/308/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2), first and third sentences, and Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as 'money laundering`), the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public;

Whereas lack of Community action against money laundering could lead Member States, for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level;

Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States' societies;

Whereas money laundering must be combated mainly by penal means and within the framework of international cooperation among judicial and law enforcement authorities, as has been undertaken, in the field of drugs, by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (hereinafter referred to as the 'Vienna Convention`) and more generally in relation to all criminal activities, by the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime, opened for signature on 8 November 1990 in Strasbourg;

Whereas a penal approach should, however, not be the only way to combat money laundering, since the financial system can play a highly effective role; whereas reference must be made in this context to the recommendation of the Council of Europe of 27 June 1980 and to the declaration of principles adopted in December 1988 in Basle by the banking supervisory authorities of the Group of Ten, both of which constitute major steps towards preventing the use of the financial system for money laundering;

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised; whereas measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited effects;

Whereas any measures adopted by the Community in this field should be consistent with other action undertaken in other international fora; whereas in this respect any Community action should take particular account of the recommendations adopted by the financial action task force on money laundering, set up in July 1989 by the Paris summit of the seven most developed countries;

Whereas the European Parliament has requested, in several resolutions, the establishment of a global Community programme to combat drug trafficking, including provisions on prevention of money laundering;

Whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism), the Member States should, within the meaning of their legislation, extend the effects of the Directive to include the proceeds of

such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis;

Whereas prohibition of money laundering in Member States' legislation backed by appropriate measures and penalties is a necessary condition for combating this phenomenon;

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, exceeding certain thresholds, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities; whereas such provisions must also be extended, as far as possible, to any beneficial owners;

Whereas credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions or copies thereof similarly admissible in court proceedings under the applicable national legislation for use as evidence in any investigation into money laundering;

Whereas ensuring that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon; whereas to this end they should pay special attention to transactions with third countries which do not apply comparable standards against money laundering to those established by the Community or to other equivalent standards set out by international fora and endorsed by the Community;

Whereas, for those purposes, Member States may ask credit and financial institutions to record in writing the results of the examination they are required to carry out and to ensure that those results are available to the authorities responsible for efforts to eliminate money laundering;

Whereas preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in such cases; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the abovementioned authorities without alerting the customers concerned, is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt credit and financial institutions, their employees and their directors from responsibility for breaching restrictions on disclosure of information;

Whereas the information received by the authorities pursuant to this Directive may be used only in connection with combating money laundering; whereas Member States may nevertheless provide that this information may be used for other purposes;

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and categories of undertakings, Member States must extend the provisions of this Directive in whole or in part, to include those professions and undertakings whose activities are particularly likely to be used for money laundering purposes;

Whereas it is important that the Member States should take particular care to ensure that coordinated action is taken in the Community where there are strong grounds for believing that professions or activities the conditions governing the pursuit of which have been harmonized at Community level are being used for laundering money;

Whereas the effectiveness of efforts to eliminate money laundering is particularly dependent on the close coordination and harmonization of national implementing measures; whereas such coordination and harmonization which is being carried out in various international bodies requires, in the Community context, cooperation between Member States and the Commission in the framework of a contact committee;

Whereas it is for each Member State to adopt appropriate measures and to penalize infringement of such measures in an appropriate manner to ensure full application of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purpose of this Directive:

- 'credit institution` means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC (4), as last amended by Directive 89/646/EEC (5), and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices outside the Community,
- 'financial institution` means 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 annexed to Directive 89/646/EEC, or an insurance company duly authorized in accordance with Directive 79/267/EEC (6), as last amended by Directive 90/619/EEC (7), in so far as it carries out activities covered by that Directive; this definition includes branches located in the Community of financial institutions whose head offices are outside the Community,
- '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 paragraphs.

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 perpetrated in the territory of another Member State or in that of a third country.

- '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.
- 'Criminal activity` means a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State.
- 'Competent authorities` means the national authorities empowered by law or regulation to supervise credit or financial institutions.

Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

Article 3

1. Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when offering safe custody facilities.
2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to ECU 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.
3. By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ECU 1 000 or where a single premium is paid amounting to ECU 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so

as to exceed the ECU 1 000 threshold, identification shall be required.

4. Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.
5. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the credit and financial institutions shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.
6. Credit and financial institutions shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.
7. Credit and financial institutions shall not be subject to the identification requirements provided for in this Article where the customer is also a credit or financial institution covered by this Directive.
8. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

Article 4

Member States shall ensure that credit and financial institutions keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, 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 transactions, 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.

Article 5

Member States shall ensure that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

Article 6

Member States shall ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

- by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering,
- by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

The information referred to in the first paragraph shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution forwarding the information is situated. The person or persons designated by the credit and financial institutions in accordance with the procedures provided for in Article 11 (1) shall normally forward the information.

Information supplied to the authorities in accordance with the first paragraph may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes.

Article 7

Member States shall ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions concerned shall apprise the authorities immediately afterwards.

Article 8

Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons

that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.

Article 9

The disclosure in good faith to the authorities responsible for combating money laundering by an employee or director of a credit or financial institution of the information referred to in Articles 6 and 7 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 credit or financial institution, its directors or employees in liability of any kind.

Article 10

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

Article 11

Member States shall ensure that credit and financial institutions:

1. establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering,
2. 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 training programmes to help them recognize operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Article 12

Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes.

Article 13

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 169 and 170 of the Treaty, to facilitate harmonized 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 harmonize the effects of Article 12;
(d) to examine whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering.

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.

Article 14

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.

Article 15

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

Article 16

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive before 1 January 1993 at the latest.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

One year after 1 January 1993, whenever necessary 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 18

This Directive is addressed to the Member States.

Done at Luxembourg, 10 June 1991.
For the Council The President
J.-C. JUNCKER

(1) OJ No C 106, 28. 4. 1990, p. 6; and C 319, 19. 12. 1990, p. 9.
(2) OJ No C 324, 24. 12. 1990, p. 264; and C 129, 20. 5. 1991.
(3) OJ No C 332, 31. 12. 1990, p. 86.
(4) OJ No L 322, 17. 12. 1977, p. 30.
(5) OJ No L 386, 30. 12. 1989, p. 1.
(6) OJ No L 63, 13. 3. 1979, p. 1.
(7) OJ No L 330, 29. 11. 1990, p. 50.

Statement by the representatives of the Governments of the Member States meeting within the Council

The representatives of the Governments of the Member States, meeting within the Council,

Recalling that the Member States signed the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, adopted on 19 December 1988 in Vienna;

Recalling also that most Member States have already signed the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime on 8 November 1990 in Strasbourg;

Conscious of the fact that the description of money laundering contained in Article 1 of Council Directive 91/308/EEC (1) derives its wording from the relevant provisions of the aforementioned Conventions;

Hereby undertake to take all necessary steps by 31 December 1992 at the latest to enact criminal legislation enabling them to comply with their obligations under the aforementioned instruments.

(1) See page 77 of this Official Journal.