

**WORKING GROUP ON CROSS BORDER FINANCIAL CRIME**

**Summary**

**1. Introduction**

On the 4<sup>th</sup> of December 2001, the European Parliament and Council of the European Union published Directive 2001/97/EC, amending Council Directive 91/308/ EEC on prevention of the use of the financial system for the purpose of money laundering.

Member states of the European Communities were obliged to comply with the Directive by the 15<sup>th</sup> of June 2003 at the latest.

Hereafter, the most important topics of the Directive will be highlighted in a summary. We will also provide the reader with an overview of the implementation of said Directive in the respective legislations of the member states.

On the 26<sup>th</sup> October 2005, the European Parliament and the council of the European Union adopted the third Anti-Money Laundering/terrorism financing directive (directive 2005/60/EG)

This directive brought European legislation in line with other international standards and more specifically the FATF's 40 recommendations and 9 special recommendations.

Over the years the European legislation concerning AML/CTF focussed more and more on lawyers and other members of the legal profession. This –some say dangerous- evolution was the result of the international feeling that criminals use members of the legal profession in order to launder money. In some cases these criminals were even advised by lawyers on how to commit the money laundering offence.

This obligation to report for attorneys conflicts with the confidential nature of the relation between an attorney and his client.

**2. AML and CTF legislation in relation to attorneys: The Directive of December 4th 2001 (2001/97/EC)**

Under article 2A, the Directive states that all obligations set forth in the Directive will be imposed on “*notaries and other independent legal professions, when they participate, whether:*

*a) by assisting in the planning or execution of transactions for their client concerning the :*

- *buying and selling of real property or business entities;*
- *managing of client money, securities or other assets;*
- *opening or management of bank, savings or securities accounts;*
- *organisation of contributions necessary for the creation, operation or management of companies;*
- *creation, operation or management of trusts, companies or similar structures.*

*b) Or by acting on behalf of and for their clients in any financial or real estate transaction.”*

Although attorneys are not mentioned explicitly, category 5 of article 2A of the Directive is applicable to attorneys at law as well.

One should not forget that the main aim of the Directive was not only to reflect best international practice in this area, but to also continue to set a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime.

The obligations imposed upon notaries and other independent legal professionals, including attorneys at law, are the following:

### **1. Identification.**

Independent legal professionals are obliged to obtain identification of their customers by means of supporting evidence when entering into business relations.

In particular they are obliged to do so in the following circumstances:

- when transactions are made by customers involving a sum amounting to 15.000 EUR or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked.
- Identification is required in case of doubt as to whether the customers are acting on their own behalf.

Persons, subject to the Directive shall carry out identification wherever there is suspicion of money laundering.

An exception is made in view of the obligation of identification in case the customer is a credit or financial institution covered by the Directive or a credit or financial institution situated in a third country which imposes equivalent requirements to those laid down by this Directive .

### **2. Obligation to report.**

Article 6 of the Directive contains the obligation for all institutions and persons subject to the Directive to cooperate fully with the authorities responsible for combating money laundering:

- By informing those authorities, on their own initiative, of any fact that 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.

Thus, attorneys at law, being part of category 5 of article 2A of the Directive are only obliged to identify a report when they participate:

a) by assisting in the planning or execution of transactions for the client concerning the :

- buying and selling of real property or business entities;
- managing of client money, securities or other assets;
- opening or management of bank, savings or securities accounts;
- organisation of contributions necessary for the creation, operation or management of companies;
- creation, operation or management of trusts, companies or similar structures;

b) Or by acting on behalf of and for their client in any financial or real estate transaction.

Outside these activities the Directive does not impose any obligations on independent legal professionals to report potential money laundering cases.

### **3. ECBA study**

On the occasion of the Board Meeting in October 2007, it was decided that the working group on cross border financial crime would conduct a comparative study on the money laundering regulations in Europe and especially regarding their impact on the legal profession.

A questionnaire was presented to the members of the ECBA at the spring conference in Amsterdam in April 2008 and updated in the course of 2009-2010. In total 19 countries replied and based on the answers that were

received, online AML/CTF country profiles were created. These country profiles are made available in an easy to use web-based reference tool that can be accessed via the ECBA-website <http://cbfcg.ecba.org>.

On this website members can easily find information on local AML/CTF legislation, as well as local definitions of money laundering, specifications on the legal professions that are especially affected by the local AML/CTF legalisation,...

Besides this general information, the database also contains information on local directives by national bar associations, information on actions that were initiated by the local bar association in relation to the obligations that were imposed on attorneys by implementing the directive and last but not least useful particularities that foreign attorneys at law must be aware of when dealing with the local legal system.

For members who want more detailed information, a list of useful websites per country was added.

Members are invited to communicate any new information that could be of interest to other members via the ECBA secretariat ([secretariat@ecba.org](mailto:secretariat@ecba.org)). Only by doing this this online reference tool can remain a single source of information for practicing lawyers when dealing with AML and CTF cases in a foreign legal system.

Peter ENGELS

Attorney at law

Member of the ECBA advisory board