II

(Preparatory Acts)

COMMISSION

Amendment to the proposal for a Council Directive on prevention of use of the financial system for the purpose of money laundering [1]

COM(90) 593 final — SYN 254

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 30 November 1990)

(90/C 319/12)

[1] OJ No C 106, 28. 4. 1990, p. 6.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES	THE COUNCIL OF THE EUROPEAN COMMUNITIES
Having regard to the Treaty establishing the European Economic Community and in particular Article 57 (2), third sentence, thereof,	Having regard to the Treaty establishing the European Economic Community and in particular Article 57 (2), first and third sentence, thereof,

Second visa and remainder of the preamble unchanged

Recitals 1 to 11 unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Recital 11a (new) Whereas, in order to facilitate money laundering investigations, credit and financial institutions should maintain adequate records of all transactions, in electronic or written forms.

Recital 12 unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Recital 13	Recital 13
Whereas preserving the financial system from money laundering is a task which cannot be carried out by the judicial and law enforcement authorities without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in cases of criminal law; whereas a mandatory system of reporting suspicious transactions is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt employees and directors from responsibility by breaching restrictions on disclosure of information;	Whereas preserving the financial system from money laundering is a task which cannot be carried out by the judicial and law enforcement authorities without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in cases of criminal law; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the mentioned 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 by breaching restrictions on disclosure of information;

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Recital 13a (new) Whereas the use of information received by the authorities pursuant to this Directive must be exclusively confined to money laundering investigations;

Recital 14 unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Recital 14a (new) Whereas appropriate measures as well as effective and sufficient sanctions must be established for infringements of measures taken pursuant to the Directive.

Recital 15 unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
HAS ADOPTED THIS DIRECTIVE:	HAS ADOPTED THIS DIRECTIVE:
Article 1	*Artikel 1*
For the purpose of this Directive,	For the purpose of this Directive,
— *credit institution* is defined in accordance with the first indent of Article 1 of Council Directive 77/780/EEC (1);	— *credit institution* means a credit institution as defined in accordance with the first indent of Article 1 of Council Directive 77/780/EEC (1) and a branch, as defined in indent 3 of Article 1 of that Directive, of a credit institution having its head office 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 14 of the list annexed to Council Directive 89/646/EEC (2), as well as an insurance company duly authorized according to Council Directives 73/239/EEC (3) and 79/267/EEC (4);	— *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 14 of the list annexed to Council Directive 89/646/EEC (2), as well as an insurance company duly authorized according to Council Directives 73/239/EEC (3) and 79/267/EEC (4). This term shall also include branches of financial institutions having their head office outside the Community;

(1) OJ No L 322, 17. 12. 1977, p. 30.
(2) OJ No L 386, 30. 12. 1989, p. 1.
(3) OJ No L 228, 16. 8. 1973, p. 3.
(4) OJ No L 63, 13. 3. 1979, p. 1.

(1) OJ No L 322, 17. 12. 1977, p. 30.
(2) OJ No L 386, 30. 12. 1989, p. 1.
(3) OJ No L 228, 16. 8. 1973, p. 3.
(4) OJ No L 63, 13. 3. 1979, p. 1.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
— *money laundering* means:	
— the conversion or transfer of property, knowing that such property is derived from a serious crime, 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 an offence or offences to evade the legal consequences of his action, and	unchanged
— 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 a serious crime;	
— *property* means assets of every kind, whether corporal or incorporal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;	unchanged
— *serious crime* means a crime specified in Article 3, paragraph 1 (a) and (c), of the United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19 December 1988 in Vienna, terrorism and any other serious criminal offence (including in particular organized crime), connected or not with drugs, as defined by the Member States;	unchanged
— *competent authorities* means the national authorities which are empowered by laws or regulations to supervise credit or financial institutions.	unchanged

Article 2 unchanged

Article 3	*Article 3*
Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened.	1. Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened.

ORIGINAL PROPOSAL

Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.

AMENDED PROPOSAL

Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.

2. Credit and financial institutions shall not be obliged to carry out the identification requirements provided for in paragraph 1 when the customer in the business relationship or in the transaction is also a credit or financial institution subject to this Directive.

3. Credit and financial institutions shall keep adequate written or electronic records of transactions of any kind to serve as evidence in any subsequent money laundering investigation for a minimum period of 5 years from the time the transaction is completed.

Article 4: unchanged

ORIGINAL PROPOSAL

Article 5

Member States shall ensure:

1. That credit and financial institutions and their directors and employees fully cooperate with the relevant judicial or law enforcement authorities competent for criminal matters:

   — by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence;

   — by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation;

AMENDED PROPOSAL

Article 5

Member States shall ensure:

1. That credit and financial institutions and their directors and employees fully cooperate with the relevant judicial or law enforcement authorities competent for criminal matters:

   — by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence;

   — by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation.

   The information referred to in this paragraph shall be transmitted to the abovementioned authorities of the Member State in whose territory the institution forwarding the information is situated.

   This information shall be transmitted, except in exceptional cases, through the person or persons designated by the credit and financial institutions, in accordance with the procedures provided for in Article 7, paragraph 1.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, 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 for such employees and directors any civil or penal responsibility of any kind.	2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, 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 for such employees, directors or institutions any civil or penal responsability of any kind.
	3. 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 paragraph 1 or that a money laundering investigation is being carried out.
	4. Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with money laundering investigations.

Article 6: unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Article 7	*Article 7*
Member States shall ensure:	Member States shall ensure:
1. That credit and financial institutions establish adequate procedures of internal control in order to prevent, detect and impede their engaging in operations related with money laundering.	1. unchanged
2. That credit and financial institutions take the appropriate measures so that their employees are aware of the provisions contained in this Directive, and that they also establish special training programs for their employees, to help them detect operations which may be related with money laundering as well as to instruct them as to how to proceed in such cases.	2. That credit and financial institutions take the appropriate measures so that their employees are aware of the provisions contained in this Directive, and that they also establish special training programmes for their employees, to help them detect operations which may be related with money laundering as well as to instruct them as to how to proceed in such cases. They shall ensure that all relevant employees participate in such training programmes.

Article 8: unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Article 8a
	(new)
	Each Member State shall take appropriate measures to ensure the application of the provisions of this Directive and in particular shall establish sufficient and effective sanctions to be applied to infringements of the measures adopted to comply with this Directive.

ORIGINAL PROPOSAL	AMENDED PROPOSAL

Article 9: unchanged

Article 9a

(new)

The Commission shall, one year after 1 January 1992 and at three-yearly intervals thereafter, draw up a report on the application of this Directive and submit it to the European Parliament and the Council

Article 10: unchanged