



[European Council of Real Estate Professions]



Revision of the Anti-Money Laundering Directive

A response of **CEPI, the European Council of Real Estate Professions**, and **CEI, the European Confederation of Real Estate Agents**, to the report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing COM (2012) 168 final.

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SUMMARY

The issue of anti-money laundering is of great importance to the real estate sector and estate agents are directly concerned by the requirements of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

On 11 April 2012 the European Commission published a report on the application of the Directive inviting comments on the issues raised and the likely impact of any possible changes to the Directive. It is important that the occasion of the revision of the Directive be used to address issues of concern to the real estate sector.

In our response to the report we focus on a number of points raised namely:

- Broadening the scope beyond the existing legal entities and in particular the exemption for legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing occurring. We ask for the recognition of the usefulness of such an exemption in the real estate sector.
- Customer due diligence with particular reference to pooled accounts and third party reliance. We ask for recognition of the importance of both issues to the sector and greater clarity in terms of third party reliance.
- With regard to self-regulatory bodies, we recognise the potential for self-regulation in the real estate sector and the important role which could be played by self-regulatory bodies if allowed to conduct such self-regulation on a voluntary basis. Therefore we request that the functions required by the Directive to be carried out be allowed to be performed by self-regulatory bodies on behalf of estate agents.
- In addition we feel that there is an important question for the sector in the form of clarification of the parties to be checked in a real estate transaction. Here we suggest that the most appropriate way of identifying an estate agent's customer is by reference to the final payment of the estate agent.

In conclusion we ask that these remarks be taken into account in the consideration of responses to the European Commission's report.



Response to report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Introduction

We have studied with interest the report on the application of Directive 2005/60/EC (the Directive) published by the European Commission on 11 April 2012. There are a number of considerations mentioned which are of importance to those working in the real estate sector. We would like to respond specifically to the following points as referred to in the report.

1). 2.3. Scope

2.3.2. Broadening the scope beyond the existing obliged entities

“(f) Exemptions: Article 2(2) of the Directive allows Member States to decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing occurring can be exempted from its scope. The revised FATF standards stipulate that transferring of money or value cannot benefit from such an exemption”.

The exemption for occasional or limited activity is helpful and encourages proportionality. It is common for some estate agents to do a small amount of additional work which is related to their main activity, for example trust and company work. Even if they already fall within the scope of the Directive because of their main activity as an estate agent, if the amount of work carried out in another regulated activity is small they may be able to avoid dual supervisory costs.

Therefore we ask for the recognition of the usefulness of such an exemption in the real estate sector. On the other hand if the proposal will not have any impact in this area, because the deletion is limited to transferring money or value in reflection of the revised FATF standards, then we would have no position on this.

2). 2.4. Customer Due Diligence

We have two issues to raise in relation to this topic:

(a). Pooled Accounts

Article 11(2) (b) of the Directive provides that by way of derogation from Articles 7(a), (b) and (d), 8 and 9(1) Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of:

(b) beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States, or from third countries provided that they are subject to requirements to combat money laundering or terrorist financing consistent with international standards and are supervised for compliance with those requirements and provided that the information on the identity of the beneficial owner is available, on request, to the institutions that act as depository institutions for the pooled accounts;



The Commission report states *“the new FATF standards have removed the reference to pooled accounts as examples of low risk scenarios. Consideration will need to be given to how to reflect the treatment of pooled accounts in the new EU Directive”*.

It would be helpful in consideration of this topic to recognise the importance of such pooled accounts in the real estate sector and in particular to extend the exemption above to include estate agents.

We propose that Article 11(2) (b) of the Directive be retained with the following addition:
Article 11(2) (b) beneficial owners of pooled accounts held by notaries and other independent legal professionals and **estate agents** from the Member States.....

(b). Third Party Reliance

The obligations on both parties for third party reliance (as permitted by Article 14 of the Directive) need to be clarified.

We would be grateful for careful consideration of this area and guidance as to the operation of Article 14 in the real estate sector. Third party reliance has the potential to significantly reduce the compliance costs borne by the public when making the biggest purchase of their lives in the acquisition of residential property. Any review must both clarify the obligations on the parties and also consider the wider systemic problems which are preventing reliance as this is leading to unnecessary confusion, delay, and cost.

One of the major issues in this context is the reference in Article 14 of the Directive to ultimate responsibility remaining with the institution relying on the third party (and the equivalent provision in FATF Recommendation 17). There are practical problems around encouraging parties to agree to being relied upon, especially in circumstances where there is unlikely to be an ongoing relationship between the party relying and the party being relied upon. The sectors which deal with real estate only tend to deal with each other either once, or at most infrequently. On the other hand financial institutions (FIs) handle multiple transactions for multiple customers with other FIs on a daily basis.

There are also serious concerns relating to barriers to information exchange posed by data protection legislation and identity theft.

It should be made easier for agents to rely on others who will be better informed about the financial structure behind transactions. For example it should be possible for real estate agents to rely upon lawyers when the lawyer has been instructed by executors in a probate sale and the lawyer then instructs the agent. Similarly if the agent acts for a buyer, and the buyer seeks an in principle decision on a loan from an FI at an early stage before instructing an agent, then it would be helpful if the agent could rely upon the FI.

We propose that the issue of third party reliance as referred to in Article 14 of the Directive be reviewed with particular reference to the real estate sector and that guidance is issued to Member States as to the possibility to permit reliance on third parties.

3). 2.11. Self-Regulatory Bodies

“Article 37(5) of the Directive allows self-regulatory bodies in certain sectors (auditor, external accountants, tax advisors, notaries and other legal professionals) to monitor and ensure compliance with AML requirements, while Article 23 allows the designation of an appropriate self-regulatory body to channel suspicious reports to the Financial Intelligence Unit”.



The Commission report also refers to the FATF standards which recognise the role of self-regulatory bodies (SROs), provided that such an organisation can ensure that its members comply with their AML/CFT obligations.

The standards include the possibility that such bodies could also establish guidelines and provide feedback on how to apply national measures, in particular with respect to reporting suspicious transactions.

It is evident that professional bodies have an important role to play in compliance with AML requirements. In practice many such bodies in the real estate sector have already established close links with the relevant national authority and co-operate with it¹. Such professional bodies are well informed in terms of the sector and activities of their members. Some SROs form close ongoing regulatory relationships with the community, and if so they are best able to satisfy the desire for supervisors to understand the risks faced by the entities they supervise. Therefore in some Member States SROs may be the organisations which are best able to supervise in a risk based way.

Estate agents are semi-regulated professionals in terms of professional qualifications, that is to say that in some countries there is regulation as to their qualifications and strict professional requirements, and in some no qualifications are required. Where there is regulation levels vary widely. This makes it easier to monitor compliance in countries where regulation exists and agents must be licensed and registered, but it may also be that an even more vital role can be played by professional bodies in countries where the profession is not regulated².

We propose that Article 37 (5) of the Directive should be changed to read as follows:

“5. In the case of the persons referred to in Article 2 (1) (3) (a) ~~and (b)~~ **and (d)**, Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2.”

4). Who is an Estate Agent's Customer?

An important additional point for estate agents is the question of which of the parties is to be checked, and most particularly in the case of estate agents whether checks are to be made on both buyer and seller. Again our experience is that there are differences between Member States. This is largely due to different practices, for example in the UK and the Netherlands it is common practice for an estate agent to act only for one party, seller or buyer but not both. In other countries, for example in Germany Bulgaria and Austria, it is common practice for an estate agent to act for both buyer and seller. The information to which the agent has access concerning the respective parties will also be very different together with the level of their involvement with that person.

In the circumstances we consider that it is important that this point is made clear to avoid confusion and duplication. One of the reasons for the current confusion is the inconsistent use of the terms 'customer' and 'client' amongst agents in different Member States. The most satisfactory solution would be to agree that the party on which checks are to be carried out is the party or parties who actually pay the estate agent. In some

¹ For example in Germany the IVD is in permanent discussion with parliamentary committees in Berlin and participates often in committee meetings. It also works together with the relevant AML authorities to supply them to reflect the realities of daily real estate practice. In Belgium the IPI collaborates with the AML cell and is collaborating with the control organ (Ministry of Economy) to develop a practical computer programme to assist with the monitoring requirements. The FATF 2011 Mutual Evaluation of the Netherlands recognizes the support given to the implementation of the CDD measures by real estate agents by their professional associations, notably the NVM. In the UK professional bodies have sat on the UK government's Money Laundering Advisory Committee for many years, and along with other SROs have co authored the leading AML guidance for the sector which has been formally approved by the UK government.

² For reference estate agents in the Netherlands are no longer regulated and only a minimal licensing requirement exists in Germany.



cases, as mentioned before, this will be both the seller and the buyer according to local practice, but in other countries it will be only one party.

We propose that the following addition be made to Article 3
(11) “customer” for the purposes of defining an estate agent’s customer means the natural person who, or legal entity which, finally pays the estate agent.

Conclusion

We ask that these remarks be taken into account in considering responses to the Commission’s report and the issues raised. We are at the disposal of the Commission for the supply of any further information which may be required.

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CEPI, the European Real Estate Council, is a unifying and representative organization at European level, defending the interests of its members towards the EU and promoting best professional practices including professional ethics and quality of education and training. It represents twenty six national professional associations of estate agents and property managers based in seventeen EU and EFTA countries.

The mission of **CEI**, the European Confederation of Real Estate Agents, is to monitor European Union policy, voicing and defending the interests of real estate professionals. It represents fourteen real estate associations in fourteen EU countries.