



# EUROPEAN COMMISSION

Internal Market DG

FINANCIAL MARKETS

Company law, corporate governance and financial crime

Brussels, 23 July 2004

DG MARKT/G4/ [REDACTED] D(2004)

## NOTE TO THE FILE

**Subject: Second Council Working Group Meeting on the proposal for the third directive on money laundering and terrorism financing.**

**20 July 2004**

### 1. GENERAL COMMENTS

The meeting continued the discussion on the substantive elements of the proposal that were not touched upon in the first meeting (of 13.07.2004, see report by [REDACTED]); i.e. enhanced customer due diligence, performance by third parties, reporting obligations, record keeping and enforcement measures. Discussion went rather well from the perspective of the Commission and no fundamental opposition by Member States to any aspect of the proposal discussed was expressed.

The general meeting was followed by a bilateral discussion with the Dutch presidency on the next steps.

### 2. SUMMARY OF KEY ISSUES

Enhanced customer due diligence. There is large support for exempting intra-Community banks relations from the enhanced customer due diligence obligation. Relations with third country banks would still be covered.

Performance by third parties. It should be highlighted that, despite some opposition, there is no majority, at this stage, against the mutual recognition article. Some improvement might be needed in the articles referring to performance by third parties, but no change of substance.

Supervision. Some consensus emerged as to the need to distinguish the supervisory powers in connection to credit & financial institutions, which could be more extended, from those in connection with other persons.

Penalties. MS essentially opposed to "penalties" being understood as criminal sanctions but are ready to accept administrative sanctions as a minimum for the violations of the

directive obligations, including those committed by legal persons. They are also opposed to any mandatory list of sanctions, but could accept an indicative one. Therefore, in essence there is no significant disagreement in terms of substance, but it is rather a presentational issue.

Record Keeping. There was a large agreement to maintain the rapid information disclosure obligation (whose aim is to rapidly find assets) limited to credit and financial institutions to ensure it is as a workable tool.

Reporting obligations. At the same time, it also appeared that there is need to modify the text of the reporting obligations in article 19 in order to ensure that competent authorities are able to receive not only financial information, but also general information from institutions and persons subject to the directive. Some MS require that not only Financial Intelligence Units, but also any other competent authority appointed by law are in a position to receive information in the first place. A new formulation will have to be found to ensure that information is in the end validly forwarded to the financial intelligence units, whose role is nevertheless recognised.

A more detailed summary of the discussions is annexed.

### 3. NEXT STEPS

Presidency requested MS to produce written comments by the end of August.

The next meeting of the Working Group will take place on 21 September 2004, possibly after a meeting on terrorism to be organised on 13 September 2004. It is also likely that on 22 September 2004, the presidency will organise a seminar on terrorism financing. The subsequent meeting of the Working Group would take place on 29 September 2004.

Another bilateral meeting with the Dutch presidency is foreseen for 26 July 2004.

Encl. 1

Cc. Messrs [REDACTED]