**European Federation of Building Societies**
**Fédération Européenne d'Epargne et de Crédit pour le Logement**
**Europäische Bausparkassenvereinigung**

**Brussels, 12 June 2012**

**Position of the European Federation of Building Societies on the report from the European Commission 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**

## General comments

The European Federation of Building Societies brings together credit institutions and institutions which promote and support the financing of home ownership. It pursues the aim, in a politically and economically converging Europe, of promoting the idea of the acquisition of home ownership. The concept of saving-for-home-ownership is based on the idea of making available to a group of savers, by pooling their savings, the necessary funds to finance home ownership within a shorter time than would have been possible for a saver acting individually. For this, the customers of the Bausparkasse conclude a saving-for-home-ownership agreement for the savings amount required. They thereby undertake to make regular savings deposits (between 3‰ and 10‰ of the agreed savings amount). If, after about seven years, 40% or 50% of this savings amount has been saved, the savers under the saving-for-home-ownership scheme are entitled to a saving-for-home-ownership loan amounting to the difference between the savings amount and the credit balance saved. In this way, the savers under the saving-for-home-ownership scheme are able to have at their disposal the entire savings amount to finance housing.

Saving-for-home-ownership is typical mass market business: the German Bausparkassen alone have some 20 million customers, who have over 30 million saving-for-home-ownership agreements. In total, the customers of the EFBS member institutions account for approximately 42 million saving-for-home-ownership agreements. The sums saved under the individual agreements are relatively small, however: the average savings amount in Germany is less than EUR 30 000. Moreover, the loans may be paid out only if there is evidence that they are to be used for housing.

The comments above show that, already through the nature of the system, the saving-for-home-ownership business of the Bausparkassen is totally unsuitable for money laundering activities. Against this background, in the Federation's view, the following comments arise on the European Commission's position paper:

## 1. Applying a risk-based approach

Reference is made under point 2.1 to the view of the FATF that the supervisors – on the basis of their assessment of the money laundering and terrorist financing risks in the country concerned and within the institutions they supervise – should follow a risk-based approach in the supervision field. The integration of national risk assessments in the new Money Laundering Directive considered in this connection is in our view to be welcomed, but should be used also to include criteria in the Directive for specific low-risk products from the money laundering point of view, such as saving for home ownership. These should then, where appropriate, be subject to generally simplified due diligence. For example, a saving-for-home-ownership agreement of a politically exposed person (PEP), on account of the low risk of money laundering caused by the system, should be made subject to distinctly less stringent requirements than, for example a current account held by this

person. The possibility of classifying certain products as unsuitable for money laundering activities and the consequences to be drawn from this in supervisory practice should be formulated in the Directive as concretely as possible in order to prevent undermining the risk-based approach by 'gold-plating' by the national supervisors.

## 2. Scope

### a. Serious crimes

Point 2.3.1 brings up for discussion whether to include 'tax crimes', which are classified by the FATF in its new standards as a predicate offence to the crime of money laundering, in the new Directive. According to the present version of the Directive, 'tax crimes' above a certain penalty in any case fall within the category of 'serious crimes', so the specification considered in this respect would ultimately bring about no material change to the legal position.

In practice, the inclusion of a concept of 'tax crime', which is not defined in detail, in the list of predicate offences would however have serious consequences which would lead to considerable bureaucracy at the expense of the institutions, but not to the detection of additional money laundering cases. In particular, it is a matter of the following: a large number of requests for information are received from the tax authorities by member institutions on account of alleged 'tax crimes' by customers. However, these do not contain any detailed information on the concrete circumstances. If 'tax crimes' were henceforth – without further specification – to be included in the Directive as a possible predicate offence, the institution concerned would in any case have to make a suspicious transaction report and apply greater due diligence in relation to the customer concerned. Furthermore, the question arises in this connection of whether the inclusion of 'tax crimes' in the Directive as a predicate offence also leads to further obligations for the institutions to carry out checks in the event of contact with other tax matters (e.g. payment of withholding tax on interest revenue).

**We therefore strongly advocate not including 'tax crimes' as a separate category of 'serious crimes' in the Directive. At least, the concept of 'tax crime' should be defined in such a way that it rules out from the outset reporting obligations in cases of minor importance. Furthermore, the introduction of a threshold value would be indispensable to avoid an unnecessary reporting burden.**

### b. Broadening the scope beyond the existing obliged entities especially to letting agents

Point 2.3.2(d) brings up for discussion including letting agents as well as 'obliged entities' in addition to the real estate agents already included pursuant to Article 2(1)(3)(d) of the current Directive. Since real estate brokerage via specialised subsidiaries is a widespread sideline of housing finance institutions (for example, a group of German member institutions run the largest independent brokerage organisation in Germany), in our view two sets of problems arise in this connection which should be considered when the Directive is reviewed:

#### (1) Real estate agents

The scope of the current Directive includes real estate agents in general, without any differentiation in their concrete activities, as obliged entities. It therefore does not consider that the activity of real estate agents differs very widely from one EU Member State to another and real estate agents are therefore exposed to the risk of being implicated in money laundering activities to very different degrees. For example, the task of real estate agents in Germany consists in bringing together real

estate buyers and sellers and working towards the conclusion of a purchase contract (only in this case can they claim commission, different parts of which – according to regional customs – are to be paid by buyers and sellers). The formal conclusion of the contract and the financial transactions between buyer and seller associated with the transfer of title to the property, on the other hand, are undertaken before a notary who also identifies the parties to the contract pursuant to the anti-money laundering legislation. Apart from the fact that for real estate agents it is already hard to determine the point of time when the business relationship is established which triggers the due diligence to be observed pursuant to the Money Laundering Directive (does this already exist if an interested party makes a general inquiry to the real estate agent, if he asks for information material on a specific property, if he visits it or only when a contract of sale has in fact been signed?), it is not clear what concrete money laundering activities could be identified through the application of due diligence, especially through identification of the customer by the real estate agent. This is all the more so if the actual parties to the contract of sale are anyway identified by the officiating notary. Although the FATF describes the practice of real estate agencies to a large extent correctly in its report on Germany,[1] it avoids drawing the conclusion from this of a lack of risk of money laundering in this field. This is justified by the assertion that it is not uncommon for affiliated interested parties to have the contract concluded before the notary by men of straw in order to avoid paying commission.[2] This procedure described by the FATF is in practice non-existent and furthermore would be of no use either to disguise money laundering activities or to circumvent the obligation to pay commission. Contrary to the assertions made by the FATF in its report on Germany, for real estate agents, who only bring buyers and sellers into contact with one another, no situation therefore results from this in which the use of special due diligence under the Money Laundering Directive leads to the detection or prevention of money laundering activities. The situation is different, however, for real estate agents who – as in Sweden, for example – not only bring together the interested parties, but also (like the notaries in Germany) themselves arrange the financial transactions associated with the transfer of title to the property. Here, the purchase price is transferred via the real estate agent to the seller so that findings for the detection of money laundering activities can be established from the identification of buyer and seller. The review of the Directive should therefore be used to consider the different fields of activities of real estate agents.

**We therefore advocate supplementing Article 2(1)(3)(d) as follows:**

**(d) Real estate agents, <u>in so far as they are involved in the financial transactions associated with the purchase or sale of real estate</u>.**

**(2) Mediation in rental accommodation by real estate agents**

The comments under (1) apply accordingly to the suggestion referred to in the Commission paper under point 2.3.2(d) of also including real estate agents' mediation in rental accommodation in the scope of the Directive. Here too, the question arises of from which point in time it is to be assumed that the business relationship is established: must every interested party who visits rental accommodation be identified or only those who ultimately enter into a lease? The more decisive question however is whether by identifying the parties to the lease any relevant findings at all can be made to prevent money laundering activities. In our view, the answer is in the negative in any case for the letting of rental accommodation outside the luxury segment and also for ordinary commercial property leases.

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[1] FATF Mutual Evaluation Report Germany, 19 February 2010, paragraphs 891 – 895.
[2] loc. cit., paragraph 893.

**We therefore strongly advocate refraining from including letting agents in the scope of the Directive or at least providing for a correspondingly high threshold.**

### 3. Customer due diligence

Point 2.4 brings up for discussion specifying the obligations with regard to third party reliance in the application of customer due diligence. In this connection, the opportunity should be taken to clarify that institutions which cooperate in a network or a group can, under specific circumstances, take over and use without restriction identification data collected by another undertaking belonging to the network or group to identify a customer. If, for example, a cooperating credit institution mediates in the conclusion of a saving-for-home ownership agreement (= opening an account through which the savings deposits and later the disbursement and repayment of the loan are undertaken), the Bausparkasse is required, as obliged party, to comply with the due diligence, i.e. in particular the identification of the customer. However, this customer is already a customer of the mediating credit institution which is not only subject in full to the prudential regulations, but also to the requirements arising from the Money Laundering Directive. There is therefore no reason to doubt the accuracy of the identification data collected by the mediating institution and to require the obliged Bausparkasse either to undertake a renewed identification or at least to check the identification data supplied by the mediating institution.

**We therefore advocate, in the case of cooperation between credit institutions licensed under EU Banking Directive 2006/48/EC, recognising the latter in each case as reliable third party and authorising the use of the identification data collected by one of these institutions by the obliged institution without any further obligation to check.**

### 4. Politically exposed persons (PEPs)

Under point 2.5, the Commission paper correctly refers to the practical difficulties arising from the definition of PEPs, their family members and persons known to be their close associates. The same applies with regard to the difficulties to procure information on PEPs. These findings particularly affect institutions which – like the Bausparkassen – engage in mass market business. Our member institutions therefore have a great deal of work in daily business practice in identifying PEPs. This results in particular from the fact that the commercial databases available in some cases contain incomplete information so that the 'manual' clarification effort needed in the case of identifiers in the PEP database that correspond to people with the same name in the customer database is disproportionately great.

**We therefore advocate that information on existing PEP characteristics is made available free of charge in generally accessible lists by the authorities (e.g. European Central Bank, European banking regulator). These should contain consolidated reliable information on the relevant data (full details of name, address and date of birth).**

### 5. Beneficial ownership

In point 2.6.1, the review is announced of the relevant threshold of 25% to determine the 'beneficial owner' pursuant to Article 3(6) of the Money Laundering Directive. In this connection, we – like the European Commission – see no evidence to conclude that there is a need to lower this threshold. Furthermore, we refer to the fact that lowering the threshold below 25% would increase the number of theoretically conceivable beneficial owners per contractual relationship to up to five and therefore would further increase the in any case large amount of time taken to investigate beneficial owners.

Furthermore, it should be borne in mind that credit institutions in a series of Member States have to enter the account master data (including the beneficial owners) in central databases so this too would give rise to considerable extra effort.

**We therefore advocate retaining the threshold in Article 3(6).**