



NEWS RELEASE

INTERNATIONAL BAR ASSOCIATION The Global Voice of the Legal Profession

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IBA voices concern at a European Commission Meeting over the difficulties on the application of Anti-Money Laundering Legislation to the legal profession

The **International Bar Association's (IBA) Anti-Money Laundering Legislation Implementation Group (AMLLIG)** recently participated in a meeting with the Committee on the Prevention of Money Laundering and Terrorist Financing of the European Commission, Internal Market and Services DG, on the application of the anti-money laundering rules to the legal profession. This Committee, created by Directive 2005/60/EC (The Third Directive) is composed of Member States delegations and chaired by the Commission services.

The European Commission organised the meeting to discuss issues of common interest to both legal practitioners and to Member States, with a view to prepare for the implementation of the Third Directive in Europe before 15 December 2007's deadline. The meeting was broadly divided into four sessions for ease of discussion: debriefing on the Financial Action Task Force (FATF) meeting held on 7-8 November 2006, presentation of the Commission staff working document on the application to the legal profession of Directive 2001/97/EC (The Second Directive), presentation by the AMLLIG on difficulties related to customer due diligence (client acceptance and performance by third parties), and presentation by the Council of Bars and Law Societies of Europe (CCBE) on difficulties related to reporting. Participation of outside bodies is unusual and the IBA were honoured to be invited to make a presentation to the meeting.

Mariano Fernandez Salas, of the European Commission Internal Market and Services DG responsible for financial crime presented the report on the impact of the Second Directive on the legal profession, as required by article 2 of the Second Directive. The Second Directive extended anti-money laundering rules to the legal profession. However, implementation is proving challenging in some countries and particular concerns have been expressed by the legal profession. The Commission report highlighted the difficulties to assess the effectiveness of the rules with respect to the legal profession due to the slow implementation of the directive by member states and the low number of responses received by the Commission. The Commission report concluded that future efforts should concentrate on: a) improving the quality of the national legislation implementing the anti-money laundering rules adopted at the European level, b) increasing outreach and awareness efforts, and c) exploring whether there are additional tools that can be used in facilitating compliance.

The AMLLIG was invited to participate as an expert and provide examples regarding practical difficulties regarding the effects on cross border services for existing clients, the introduction of a client between professionals, and the practical examples of the inability to verify clients from an independent source.

Stephen Revell, Chair of AMLLIG confirmed, *the AMLLIG is very supportive of the international flight against money laundering. However, the current process for CDD places an unnecessary administrative burden on the legal profession as different approaches taken by member states in Europe leads to confusion amongst clients, unnecessary costs and regulatory arbitrage, thereby hampering cross border services. There is also a tension between the risk based approach and document gathering*’ He added *‘guidance from enforcement authorities concerning AML scenarios and typologies is very much needed.’* He also underscored the need for more bars to focus on information dissemination and training including as part of law school curricula.

The CCBE reiterated that one of the greatest issues affecting lawyers was the obligation to report suspicious transactions. The CCBE argued that such an obligation breached the principle of the attorney-client relationship - which lies at the core of the legal profession worldwide; severely harms the rule of law and democracy; and impairs access to justice. Mr. Revell added *‘we need evidence that lawyers are unwittingly being used to facilitate money laundering activities which would justify reporting obligations on the legal profession – if they are knowingly involved they will be liable as a primary offender.’*

The meeting, held on 13 February in Brussels, was attended by representatives from the European Commission, member states delegations, various bar associations, including the Council of Bars and Law Societies of Europe.

Representatives from the Commission welcomed the input of the AMLLIG and made clear that different approaches to the transposition of the Second Directive should be harmonised wherever possible pursuant to Article 15 of the Third Directive.

Stephen Revell of Freshfields Bruckhaus Deringer; and Valentina Zoghbi, IBA Project Lawyer attended the meeting on behalf of the IBA AMLLIG

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About the International Bar Association

- the global voice of the legal profession

In its role as a dual membership organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Mexican Bar Association and the Law Society of Zimbabwe.

Grouped into two Divisions – the Legal Practice Division and the Public and Professional Interest Division – the Association covers all practice areas and professional interests. It provides members with access to leading experts and up-to-date information as well as top-level professional development and network-building opportunities through high quality publications and world-class Conferences. The IBA's Bar Issues Commission provides its Member Organisations with substantive and social programmes at meetings and the IBA's Human Rights Institute works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

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