



The Consumer Voice in Europe

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**

BEUC RESPONSE TO THE CONSULTATION

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Ref.: X/2012/041 - 12/06/2012

BEUC, The European Consumer Organisation has a membership of 42 well respected, independent national consumer organisations from 31 European countries (EU, EEA and applicant countries). BEUC acts as the umbrella group in Brussels for these organisations and our main task is to represent our members and defend the interests of all Europe's consumers.

BEUC welcomes the opportunity to comment on the Commission 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.

BEUC supports the Commission work and cooperation at the global level to protect the financial system from being misused for money laundering and financing of terrorism purposes. It is definitely necessary to fight against any kind of illegal activities. The question, however, is how to better reconcile the anti-money laundering and anti-terrorist financing rules with other EU legislation in the area of retail financial services, consumer privacy and data protection, consumer choice and mobility within the Single Market.

Hereby, we would like to focus our comments on one particular area of application of the Third Anti-Money Laundering Directive (the Third AMLD), namely, the opening of bank accounts. Financial inclusion, and more specifically access to basic financial services, is one of consumer organisations' main priorities. We have been asking for a universal right for all EU consumers to a bank account for a long time now¹. However, access to a bank account is sometimes unjustifiably limited by financial institutions at both national and cross-border level due to an inappropriate application of the AMLD.

Article 8(1)(a) of the Third AMLD requires that the customer's identity is established: "*Customer due diligence measures shall comprise identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from reliable and independent source.*" As the Directive is based on minimum harmonisation, it is left to Member States to provide detailed guidelines as regards documents that may be requested by the bank before opening a bank account.

For example, in France, according to the "Arrêté du 2 septembre 2009", consumers can be requested to provide information on their personal financial situation before opening a bank account and later at any moment². Before opening a bank account at the Caisse d'Epargne or the Credit Agricole, each consumer has to provide evidence of his sources of income (e.g. copy of pay sheets and income tax returns)³.

¹ See BEUC [response](#) to the Commission consultation on access to a basic payment account, Nov 2010:

² Arrêté du 2 septembre 2009 pris en application de l'article R. 561-12 du code monétaire et financier et définissant des éléments d'information liés à la connaissance du client et de la relation d'affaires aux fins d'évaluation des risques de blanchiment de capitaux et de financement du terrorisme :

2° Au titre de la connaissance de la situation professionnelle, économique et financière du client et, le cas échéant, du bénéficiaire effectif :

a) Pour les personnes physiques :

- o la justification de l'adresse du domicile à jour au moment où les éléments sont recueillis ;
- o les activités professionnelles actuellement exercées ;
- o les revenus ou tout élément permettant d'estimer les autres ressources ;
- o tout élément permettant d'apprécier le patrimoine (...).

³ See BEUC [response](#) to the Commission consultation on access to a basic payment account, Nov 2010.

French banks have used the Third AMLD to massively send letters to consumers in an undifferentiated way, without taking into account the age of customers, or the intensity of their banking activity. All clients were solicited, including those whose bank account activity (income/expenses) has not changed for several years. Besides this, banks have used the pretext of the Directive to conduct a campaign to collect data for marketing purposes: they went much further than the Directive requires (e.g. proof of identity, proof of address, income/wealth); some banks have requested the names and ages of the clients' children. A very large number of consumers have seen this campaign as a violation of their privacy, all the more so because the banks said in their letters that the lack of response, including the questions unrelated to the fight against money laundering, could result in bank account closure.

Another example, the Irish law does not limit the kinds of documents or information that can be used to confirm the identity of a customer and states that *"... the Minister may prescribe different classes of documents, or combinations of classes of documents, for different kinds of designated persons, customers, transactions, services or risks of money laundering or terrorist financing."*⁴

These divergences at Member State level:

- act as barriers to consumers' access to financial services;
- restrict their mobility in the Single Market;
- raise privacy and data protection concerns.

It has been observed that in some national legislations more stringent banking practices are applied which can make it harder for consumers to access banking services. In several countries, the proof of residence is necessary and may create difficulties for consumers in particular circumstances. Some financial institutions use legislation on money laundering to decide to open or not a bank account even if their decision has nothing to do with a real risk. Immigrants, people having irregular incomes or receiving social benefits have more difficulties to provide supporting documents of their revenues. In addition, one can also wonder why a bank should have an overview of incomes, personal properties and assets of its private customers when no suspect transaction has been identified.

In addition, varying national interpretations and stricter rules may be against the European Parliament's and Commission's objective to ensure, inter alia, cross-border access to a basic payment account for all EU residents⁵. The cross-border aspect was already raised in the Report of the Expert Group on Customer Mobility in Relation to Bank Accounts in 2007⁶. The Group recommended that:

- the impact of existing anti-money laundering rules on customer mobility be analysed by the Commission;
- the impact of divergent legal and regulatory requirements for opening of bank accounts (documentation, storage etc.) in the EU-27 be analysed by the Commission.

⁴ Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, Chapter 3 – Customer due diligence: <http://www.oireachtas.ie/documents/bills28/acts/2010/a0610.pdf>

⁵ See the Commission Recommendation on access to a basic payment account, July 2011: http://ec.europa.eu/internal_market/finservices-retail/inclusion_en.htm

⁶ Report of the Expert Group on Customer Mobility in Relation to Bank Account, June 2007, p. 35: http://ec.europa.eu/internal_market/finservices-retail/docs/baeg/report_en.pdf

We are not aware of any publicly available Commission study following the Expert Group recommendations above.

The diversity in implementation of stricter measures was also mentioned in the Commission study on the application of the Third AMLD as a possible obstacle to cross-border compliance⁷.

BEUC recommends that the interpretation of the AMLD be harmonised. More specifically, the revised Directive should feature the list of "*documents, data or information obtained from reliable and independent source*" which may be requested or obtained by the financial institution before opening the account. This list should be limited to what is absolutely necessary and should not jeopardize other EU policies like fighting against financial inclusion and building a real Single Market where consumers could open bank accounts where they want, including in other EU countries, in order to take advantage of the Single Market. The Directive should set out the type of documents that have to be accepted and should require Member States to set out a list of specific documents that financial institutions have to accept as proof of address. Such an approach would enable a more coherent application of the AMLD across Member States, reduce the eventuality of arbitrary and unfounded refusals to open bank accounts, better protect consumer personal data and privacy, and better match other EU legislation.

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⁷ Final Study on the Application of the Anti-Money Laundering Directive, European Commission, Jan 2011, p. 5: http://ec.europa.eu/internal_market/company/docs/financial-crime/20110124_study_aml_d_en.pdf