Putting Starch in European Efforts to Combat Money Laundering

Scott E. Mortman
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INTRODUCTION

In forming a single financial market, the European Community ("EC") has taken significant steps toward removing the barriers that impede the free movement of goods, services, and workers among nations. The removal of these barriers has provided criminals with the opportunity to utilize the unified European financial market in concealing the source of the proceeds from their illegal activities.\(^1\) By transferring the proceeds derived from criminal activities, such as drug trafficking or terrorism, through financial\(^2\) and credit institutions\(^3\) in different European nations, criminals can make these proceeds appear to be the result of legitimate business activities.\(^4\) This process of using legitimate institutions to conceal the source of illegitimate gains is commonly known as money laundering.\(^5\)

The ability to launder money without being detected by law enforcement authorities promotes criminal activity by providing an attractive economic incentive. Increased levels of drug trafficking and other forms of organized crime are partially the result of successful attempts at money laundering.\(^6\) Opportunities for success are augmented when

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2. See infra note 21.
3. See infra note 22.
4. The Financial Action Task Force, established by the Group of Seven, has estimated that drug sales in Europe and the United States amount to $122 billion annually, from which nearly $85 billion are profits available to be laundered through financial markets. See Lascelles, Money Laundering Under Siege, Fin. Times, Apr. 20, 1990, at 39, col. 5. According to a report submitted to the European Parliament, $100 billion in drug proceeds is laundered across the world each year. See 100 Billion Dollars in Drug Money Laundered Every Year: EC, Agence France Presse, Oct. 15, 1991, available in LEXIS, World Library, ALLWLD File.
5. For conceptual purposes, money laundering is divided frequently into three stages—placement, layering, and integration. See P. Meltzer, Keeping Drug Money From Reaching The Wash Cycle: A Guide To The Bank Secrecy Act, 108 Banking L.J. 230, 231 (1991). "Placement is the physical disposal of bulk cash proceeds into a financial institution. Layering is the process of transferring these funds among various accounts through a series of complex financial transactions that are intended, to the greatest extent possible, to separate these funds from their original sources. Finally, integration is the process of shifting the laundered funds to legitimate organizations that have no apparent link to organized crime." Id. It is generally agreed that money laundering is most easily detected, and thereby prevented, at the initial placement stage. See id.
money launderers are able to disguise the source of their proceeds in an integrated international economic context. In addition to facilitating criminal activity, laundering criminal proceeds through financial institutions can undermine the stability and integrity of these institutions and jeopardize public confidence in the banking system as a whole.

Recently, in an effort to combat international money laundering, European nations have been participating in a variety of international and national fora aimed at curbing money laundering. This European effort is, in part, a response to increasing global drug trafficking, pressure by the United States to reform, and recent money-laundering scandals involving European financial institutions and public officials. Europeans have also been motivated by their concern for maintaining the stability and integrity of European financial institutions as they develop a single market for financial services and promote liberal capital movement within Europe.

This Note will explore efforts to combat money laundering in Europe. Part I reviews recent international efforts, such as the EC Directive, designed to curb money laundering in Europe. Part II examines recent legislation and regulations adopted by European nations to reduce money laundering within their borders. Part III analyzes these international and national efforts to combat money laundering and develops a two-pronged model to describe them. This model focuses on legal measures and the duties of financial institutions to prevent money laundering. Part III also addresses alternative measures that may prove effective in preventing money laundering in Europe. Finally, this Note concludes that implementation of the EC Directive and other international agree-


9. See Banoun & Lerner, International Drive Against Laundering, Money Laundering L. Rep., Jun. 1991, at 3; Nowinski and Bagge, Moves to Curb Money Laundering, Fin. Times, Jan. 31, 1991, at 29, col. 1; Zagaris & Bornheim, supra note 8, at 119. The laundering of proceeds by organized criminal groups operating in Europe has also increased over recent years as more groups have sprung up to handle the larger drug trade. See Zagaris & Bornheim, supra note 8, at 122.

10. See Banoun & Lerner, supra note 9, at 3; Nowinski & Bagge, supra note 9, at 29; Zagaris & Bornheim, supra note 8, at 119.
ments through national legislative and regulatory measures should significantly reduce the level of money laundering in Europe.

I. RECENT INTERNATIONAL EFFORTS TO CONTROL MONEY LAUNDERING IN EUROPE


The most recent effort designed to prevent the use of the European financial system for the purpose of money laundering is EC Council Directive 91/308.¹¹ This Directive, advanced under Article 57 and Article 100a of the EEC Treaty,¹² was adopted by the EC on June 10, 1991.¹³ In drafting this Directive, the EC recognized that the most effective method of curbing money laundering is through an organized coordinated effort among European nations.¹⁴ The Directive is intended to preclude individual nations from adopting initiatives contrary to a liberal and integrated European financial market.¹⁵

The two principal aims of the Directive are criminalizing money laundering in EC member states and increasing cooperation among member states in investigating and prosecuting money launderers.¹⁶ The Directive requires each member state to enact national legislation criminaliz-

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¹² See id. The EEC Treaty, also known as the Treaty of Rome, created the EEC in 1957 and established the fundamental principles of the Community. See W. Rawlinson & M. P. Cornwell-Kelly, European Community Law 2 (1990). These principles included the freedom to move goods, workers, and capital and to provide services across national borders within the EEC. See id.
¹⁴ "Measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited effects." Council Directive 91/308, supra note 11, at 78.
¹⁵ See id. at 77; West's European Update, Banking and Financial Services, 1991 WL 11696 (D.R.T.), at 60, available in WESTLAW, Eurupdate Database [hereinafter Eurupdate].
ing money laundering as defined in the Directive.\footnote{17} The Directive derives its definition of money laundering from the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("Vienna Convention") adopted by the United Nations in December 1988.\footnote{18} The Directive defines money laundering to include the laundering of proceeds from criminal activities which occurred in another member state or in a third country that is not part of the EC.\footnote{19} Significantly, the Directive encourages member states to expand, through national legislation, the definition of "criminal activity" to include crimes not specified in the Vienna Convention.\footnote{20}

\begin{itemize}
\item The following conduct when committed intentionally:
\begin{itemize}
\item the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,
\item the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,
\item the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
\item participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.
\end{itemize}
\end{itemize}


\footnote{18}{See Council Directive 91/308, supra note 11, at 83. As stated in the Directive, "money laundering" is defined as}

\footnote{19}{Since all member states did not agree that money laundering as defined in the Directive should include the proceeds of criminal activity other than drug trafficking, the extension of this definition to include other crimes was left to the discretion of each member state. See Council of Europe Follows Slow Pace in Reaching Laundering Agreement, Money Laundering Alert, March, 1991, at 7, available in LEXIS, World Library,
In addition to compelling criminalization, the Directive seeks to reduce money laundering by imposing certain duties on financial institutions and credit institutions. Pursuant to the Directive, credit and financial institutions in member states are required to obtain identification from their customers upon entering into a business relationship. These institutions also must obtain identification each time a customer engages in a transaction involving a sum equal to or greater than 15,000 ECU (approximately $18,500 U.S.). Customer identification is required for transactions below the threshold amount whenever there is a suspicion of money laundering. In cases where it appears that a customer is acting on another's behalf, credit and financial institutions must take reasonable measures to obtain the identity of the person on whose behalf the transactions are being carried out.

21. As defined in EC Council Directive 89/646, a financial institution is "an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in . . . the Annex." Council Directive 89/646, art. 1, 1989 O.J. (L 386) 1, 3. The activities referred to in the Annex include lending, financial leasing, money transmission services, issuing and administering means of payment, trading in money market instruments, foreign exchange, and securities, money broking, and safe custody services. See id. at 13. Financial institutions as defined in the EC Directive on money laundering include duly authorized insurance companies. See Council Directive 91/308, supra note 11, art. 1, at 79.


24. See id. The identification requirement will be triggered whether the 15,000 ECU (European Currency Unit) threshold is reached in a single transaction or in a series of apparently related transactions. See id. This 15,000 ECU threshold was a compromise figure agreed upon after some debate within the EC. See Banking: Political Agreement on Money Laundering Proposal, Eur. Rep., Dec. 11, 1990, at 3, available in LEXIS, World Library, ALLWLD File [hereinafter Banking]. Germany had preferred a higher threshold of 25,000 ECU while France had been arguing for a lower 10,000 ECU threshold. See id. For a discussion of the problem in the United States of money launderers structuring transactions to avoid mandatory reporting requirements, see infra note 253.

25. See Council Directive 91/308, supra note 11, art. 3, at 80. With regard to identification, credit and financial institutions dealing with other credit and financial institutions bound by the Directive are exempted from these requirements. Other exemptions involve mainly insurance and pension plan programs. See id. These other exemptions were inserted at the request of the Netherlands which argued that life insurance and pension fund schemes were unlikely to be used to launder funds and should not have to comply with the obligations of the Directive. See EC Finance, supra note 17.
behalf business is being transacted. The Directive also requires that these institutions maintain all identification and transaction records of their customers for a minimum of five years after the relationship with the customer terminates.

Credit and financial institutions are also required to examine carefully any transaction which, by its nature, they believe is likely to involve money laundering. Institutions in member states are required to inform the appropriate authorities of any suspected money-laundering transaction and to provide the authorities with the information necessary for their investigations. The Directive further states that credit and financial institutions should refrain from engaging in any suspected or known money-laundering transaction until they have informed the appropriate authorities. These authorities may, in accordance with their national legislation, prohibit the institution from carrying out the transaction.

To comply with these various requirements, credit and financial institutions must develop internal control and training procedures to facilitate the detection, investigation, and reporting of transactions involving money laundering. In addition, the good faith disclosure of information to money-laundering authorities by the directors or employees of these institutions will not breach national laws regulating the disclosure of banking information. Such good faith disclosure also will not expose the institutions, their directors, or employees to civil or penal liability.

27. See id. art. 4, at 80. Regarding identification records, credit and financial institutions must retain a copy of or references to the records. Regarding transaction records, original documents or copies admissible in court proceedings of the member state must be retained. These records are to be maintained for evidentiary purposes in money-laundering investigations. See id.
28. See id. art. 5, at 80. The EC considered creating a threshold above which financial and credit institutions would be required to examine transactions and report only those transactions they considered to be suspicious. See Money Laundering Directive Drafted, supra note 7. Due to disagreement between member states over the threshold amount, this idea was not incorporated into the Directive. See id.; Eurupdate, supra note 15, at 64-65.
29. See Council Directive 91/308, supra note 11, art. 6, at 80. These institutions may notify neither their customers nor any third parties that information has been supplied to the authorities or that an investigation into suspected money laundering is taking place. See id. art. 8, at 81. Unless otherwise permitted by the member state, information provided to the authorities is to be used only in their money-laundering investigations. See id. art. 6, at 80.
30. See id. art. 7, at 80.
31. See id. When informing authorities prior to a transaction would make subsequent efforts to prosecute the money launderer unlikely or impossible, the institution may execute the transaction and inform the authorities immediately thereafter. See id.
32. See id. art. 11, at 81.
33. See id. art. 9, at 81.
34. See id. In drafting the Directive, some member states, such as Germany, were concerned that the required reporting of transactions believed to be suspect by credit and financial institutions but later proved to be legitimate would subject these institutions to prosecution and civil suits under their national laws. See Banking, supra note 24, at 3.
Each EC member state is required to adopt national measures necessary to implement the Directive by January 1, 1993. In implementing the Directive at the national level, member states are given wide discretion in levying sanctions and penalties for money laundering violations. Member states are also free to adopt stricter measures to curb money laundering, as those contained within the Directive are the minimum prescribed level.

B. Council of Europe Convention

The EC Directive relies upon and complements other international efforts designed to combat money laundering in Europe. One such effort is the Council of Europe: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the "Convention"). Signed in Strasbourg, France in November 1990, the Convention requires that signatory countries implement a system of international cooperation in order to deprive criminals of their proceeds. The Convention has been signed by those countries which comprise the Council of Europe and will be effective upon ratification by three signatory countries, at least two of which must be members of the Council.

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36. See id. art. 14, at 81. The Directive itself does not harmonize among member states the penalties and sanctions to be levied for violations thereof nor the level of cooperation needed for implementation. See Euroscope, supra note 16. See generally Council Directive 91/308, supra note 11 (absence of "harmonizing" requirements). However, the Directive does call for the establishment of a committee, under the auspices of the EC Commission, "to facilitate harmonized implementation of this Directive." Council Directive 91/308, supra note 11, art. 13, at 81. This committee would also monitor, advise, and report to the Commission on proposed amendments to the Directive which would help to eliminate money laundering. See id.
40. See id. at 150.
42. See 30 I.L.M., supra note 39, art. 36, at 162.
Parties to the Convention are requested to enact, at the national level, all measures necessary for the investigation and confiscation of proceeds and property derived from criminal activity.\textsuperscript{43} Parties also are requested to enact all measures necessary to order financial and credit institutions to surrender records where money laundering is suspected.\textsuperscript{44} Furthermore, bank secrecy laws are to be eliminated as a grounds for refusal to comply with these regulations.\textsuperscript{45}

According to the Convention, money laundering will be made a criminal offense under the domestic law of each nation.\textsuperscript{46} In addition, parties are called upon to cooperate with each other "to the widest extent possible" in investigating, freezing or seizing, and confiscating proceeds and property derived from criminal activity.\textsuperscript{47} The Convention lists the grounds under which a party may rightfully refuse or postpone cooperating with another party.\textsuperscript{48} Finally, the Convention outlines the procedures the parties are to use when communicating with each other in handling and executing requests made regarding the Convention.\textsuperscript{49}

C. FATF Report

Another international program relied upon by the EC in formulating its Directive is the Group of Seven ("G7") Financial Action Task Force ("FATF") report adopted in April 1990.\textsuperscript{50} The FATF was created in July 1989 at the Economic Summit of Industrialized Countries in Paris in an effort to develop an international approach to controlling money laundering.\textsuperscript{51} The FATF report consists of a forty-point proposal for

\textsuperscript{43} See id. arts. 2-3, at 151.
\textsuperscript{44} See id. art. 4, at 151.
\textsuperscript{45} See id.
\textsuperscript{46} As in the case of the EC Directive, the Council of Europe Convention uses the definition of money laundering contained in the Vienna Convention without restricting this definition solely to drug-related offenses. See id. art. 6, at 152; supra note 18.
\textsuperscript{47} See 30 I.L.M., supra note 39, arts. 7-17, at 153-55.
\textsuperscript{48} See id. arts. 18-20, at 155-57.
\textsuperscript{49} See id. arts. 23-35, at 158-61.
\textsuperscript{51} See Banoun and Lerner, supra note 9, at 6; G-7, Europe Progress on Laundering Initiatives, Money Laundering Alert, July 1991, at 7 [hereinafter G-7, Europe]. For its definition of money laundering, the FATF report relies on the definition contained within the Vienna Convention but restricts the scope of the definition to include only drug-related criminal activity. See supra note 18. Since releasing its report, the FATF has expanded to over thirty nations—going beyond the G-7 nations, Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States, and nine other participants, Australia, Austria, Belgium, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, and the Commission of the European Communities, to include countries such as Denmark, Finland, Greece, Hong Kong, Ireland, New Zealand, Norway, Portugal, and Turkey. See FATF Members Agree to Mutual Assessment of Progress in Fighting Money Laundering, [Jan.-June] Banking Rep. (BNA) No. 24, at 1164 (June 17, 1991)
reducing international money laundering grouped broadly into three categories: criminal law, banking law, and international cooperation.52

In its report, the FATF recommends that nations enact legislation making money laundering a criminal offense and holding corporations and their employees criminally liable for money-laundering activities.53 The FATF also proposes that financial institutions improve their systems for monitoring cash transactions54 and report all suspected drug-related transactions.55 To allow financial institutions to report suspect transactions in good faith without risking civil or criminal liability, the report urges the relaxing of national bank secrecy laws.56

Pursuant to the FATF report, financial institutions are requested to improve their methods of identifying customers and to ascertain the actual beneficiaries, if different from the account holders, of all accounts.57 The FATF notes that anonymous accounts or accounts in fictitious names should be prohibited.58 In addition, all transaction and identification records should be maintained for a minimum of five years, as potential evidence in prosecuting money-laundering activity.59 Financial institutions should also institute internal training and control procedures to detect and report money-laundering transactions.60

The report also endorses wider ratification of the Vienna Convention which commits signatory nations to criminalizing money laundering and opens channels for mutual legal assistance.61 Cooperation between countries in the areas of confiscation and extradition is promoted by the FATF.62 FATF members believe that law enforcement authorities, financial institution regulators, and financial institutions must all collabo-
rate with one another to end money laundering. To facilitate this cooperation, existing international organizations should be used to monitor money transfers between countries and provide information on ways to improve money laundering detection.

In a continuing effort to fight international money laundering, the second session of the FATF issued a prepared statement on June 4, 1991 at the Organization for Economic Cooperation and Development ("OECD") meeting in Paris. The statement noted that the nations, territories, and organizations which comprise the FATF had agreed to a process of "mutual assessment" in order to ensure that the proposals contained in the April 1990 FATF report were being implemented. Pursuant to this statement, each member of the FATF will be evaluated three years after endorsing the April 1990 report, and summaries of these evaluations will be made public. The FATF also agreed to attempt to increase its membership and to influence non-member countries to support the proposals listed in the April 1990 report.

D. Basle Committee Statement

International money laundering was also the focus of a statement issued in Basle, Switzerland by the Committee on Banking Regulations Supervisory Practices ("Basle Committee") in December 1988. This Committee consisted of representatives from the central banks and supervisory authorities of the Group of Ten ("G10"). In its statement, the Basle Committee recognized that, although the main purpose of bank supervisory authorities is to maintain the financial stability of banks, and not to ensure the legitimacy of individual banking transactions, these au-

63. See Treasury Releases, supra note 55, at 703.
64. See G-7 Nations Launch Global Laundering Assault, supra note 58, at 1.
65. See FATF Members, supra note 51, at 1164.
66. See id.
67. See id.
68. See id. To become a member of the FATF, a nation is required to endorse the proposals contained within the April 1990 report. See G-7, Europe, supra note 51, at 7. By expanding its membership and trying to influence non-member countries, the FATF had hoped to make it more difficult for criminals to launder their funds between nations. See FATF Members, supra note 51, at 1164. More recently, however, the FATF has stated that, in order to maintain its efficiency, membership should not be extended beyond those already invited to join. See Zagaris, Financial Action Task Force Report Provides Additional Momentum, 7 Int'l Enforcement L. Rep. 421, 424 (Nov. 1991). For further details of the most recent report issued by the FATF, see id.
69. For the text of the Basle Committee Statement, see Trends and Forces in International Banking Law 113-17 (W. Park ed., Boston Univ., Mar. 1990) [hereinafter Trends and Forces].
71. The Committee was comprised of representatives from Belgium, Canada, France, Germany, Great Britain, Italy, Japan, the Netherlands, Switzerland, and the United States, as well as Luxembourg and Sweden. See Trends and Forces, supra note 69, at 114 n.2.
authorities "cannot be indifferent to the use made of banks by criminals."\textsuperscript{72} Such indifference may cause banks to suffer losses through fraud or the adverse effects of being associated with criminals.\textsuperscript{73} This association of banks with criminal activity erodes public confidence and undermines the stability of the banking system.\textsuperscript{74}

To maintain the stability of financial institutions and prevent criminal use of the banking system internationally, the Basle Committee developed a set of principles in the belief that "the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money-laundering."\textsuperscript{75} The Committee agreed that banks should make reasonable efforts to identify customers and ascertain actual ownership of accounts and safety deposit facilities.\textsuperscript{76} The Committee also agreed that banks should not engage in transactions with customers who fail to provide evidence of their identity\textsuperscript{77} nor in transactions which the banks "have good reason to suppose are associated with money-laundering activities."\textsuperscript{78}

The Basle Committee stated that banks should cooperate to the extent possible with national law enforcement authorities without violating regulations on customer confidentiality.\textsuperscript{79} Banks should not assist customers who attempt to deceive law enforcement authorities.\textsuperscript{80} When banks have reason to presume that a deposit derives from criminal activity, or that a transaction is criminal in nature, they should take appropriate legal measures.\textsuperscript{81} Banks are requested to adopt formal policies consistent with these principles and to develop internal control and training procedures to ensure that these policies are executed.\textsuperscript{82} Furthermore, banks should develop specific procedures for customer identification and for the retention of transaction records.\textsuperscript{83}

\textbf{E. Vienna Convention}

The primary international effort to halt the laundering of drug proceeds upon which the EC Directive and other efforts rely is the Vienna Convention...
The Convention was enacted formally in November 1990 after being ratified by the requisite twenty nations. In recognition of escalating international drug production and trafficking, an important aim of the Convention is "to deprive persons engaged in illicit [drug] traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing." The Convention focuses upon international cooperation as an important means of eliminating drug money laundering.

Each party to the Convention is required to adopt national measures necessary to criminalize the laundering of proceeds derived from drug trafficking and production. Similarly, each party is obligated to adopt national measures necessary to empower domestic authorities to confiscate drug proceeds and property purchased with drug proceeds. If confiscation of proceeds and property is requested by another party with jurisdiction over the offense, the party receiving the request is obligated to identify, trace, and freeze or seize the requested items. Parties are to consider contributing confiscated proceeds or property to intergovernmental drug-fighting agencies or equitably dividing these proceeds or property among the involved parties.

Each party also is required to enunciate those criminal offenses that are deemed extraditable pursuant to the Convention and must include these offenses in extradition treaties between the parties. Parties shall provide one another with "the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings" for criminal offenses covered by the Convention. Mutual legal assistance may not be denied on the grounds of bank secrecy laws. Furthermore, parties are

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86. 28 I.L.M., supra note 84, at 498.

87. See id.

88. See id. art. 3, at 500-03.

89. See id. art. 5, at 504-07.

90. See id. at 505.

91. See id. at 506.

92. See id. art. 6, at 507. Each party shall also take all appropriate measures to expedite extradition requests by another party to the Convention. See id. at 507-08.

93. Id. art. 7, at 508. This assistance may include providing relevant information or records, or executing drug-related searches and seizures. See id.

94. See id. at 509.
expected to cooperate with one another by maintaining lines of communication through which information may be passed and inquiries conducted. Finally, parties must develop law enforcement training programs to detect, monitor, and prevent criminal offenses covered by the Convention.

II. RECENT EUROPEAN NATIONAL EFFORTS TO CONTROL MONEY LAUNDERING

In support of the recent international efforts to curb money laundering in Europe, many European nations have adopted, or are in the process of adopting, measures aimed at thwarting money laundering. These measures consist of legislation and regulations designed to prevent laundering within national borders and to foster cooperation between nations in achieving this goal.

A. Switzerland

Although not part of the EC, Switzerland has taken the lead in combatting money laundering. Swiss financial institutions were notorious havens for criminals and dictators to safely conceal the source of their funds by hiding behind Swiss bank secrecy laws. Swiss banks have been implicated frequently in international money-laundering operations. In an effort to break from its nefarious past, the Swiss government, in conjunction with Swiss financial institutions, has recently enacted a multitude of anti-money-laundering legislation.

95. See id. art. 9, at 511-12.
96. See id. at 512.
98. See Wicks, Swiss Bank Code Agreed on Depositor Verification, Fin. Times, Mar. 24, 1987, at 33, col. 4. Two recent money-laundering scandals involving Swiss financial institutions were the "Lebanon Connection" and the "Pizza Connection." See Peters, supra note 97, at 106. The "Lebanon Connection," uncovered in autumn of 1988, involved allegations that several of Switzerland's largest banks had aided in the laundering of approximately $1 billion for a Lebanese-Turkish drug ring over a two-year period. See id. at 106 n.8. The "Pizza Connection," uncovered in spring of 1984, involved allegations that a number of Swiss banks and finance companies had aided in laundering the profits derived from the sale of heroin valued at $1.6 billion. See id. at 106 n.7.
99. In acting to prevent money laundering, Switzerland was motivated to reform by strong pressure from the United States and by internal scandals. See Bates, Swiss Phasing Out Secret Bank Accounts, L.A. Times, May 4, 1991, at D1, col. 2; Council of Europe, supra note 20, at 7; Mufson, supra note 97, at A20, col. 3; Parry, Swiss Laws to Get Tougher on Laundering of Money, Wash. Post, May 11, 1989, at D4, col. 1. Subsequent investigation of the "Lebanon Connection," see discussion supra note 98, led to the resignation of the Swiss Justice Minister when it was publicly disclosed that the Minister had notified her husband of an ongoing money-laundering investigation that might implicate him. See Council of Europe, supra note 20, at 7. As a result of this particular scandal, a Swiss parliamentary commission was formed in January 1989 to investigate the Federal Justice and Police Department and reported that Swiss justice officials were too soft on
In March 1990, the Swiss Parliament gave final approval to Articles 305bis and 305ter of the Swiss Penal Code which criminalize money laundering. Article 305bis, entitled “Money Laundering,” punishes by imprisonment or fine any act which attempts to obstruct investigation into the origin, discovery, or confiscation of assets or property which the actor knows or assumes originated from a crime. Article 305bis is not limited to drug-related assets or property and encompasses the proceeds derived from any criminal activity under Swiss law. The Swiss extended jurisdiction under the Article to principal crimes that are committed and punishable in a foreign country. The heightened sanctions of Article 305bis include a five-year maximum prison sentence and a fine of up to one million Swiss francs in aggravated cases.

Facing opposition from banks, the Swiss government abandoned the idea of criminalizing the negligent acceptance of criminal funds. Article 305ter, entitled “Lack of Due Diligence in Handling Money,” how-
ever, punishes by imprisonment, arrest, or fine one who professionally accepts, deposits, or assists in investing or transferring foreign assets and fails to determine, with the care required by the circumstances, the identity of the beneficial owner. Article 305ter binds financial institutions conducting transactions on behalf of third parties and will attach whether the assets originate from legitimate or illegitimate activity.

In addition to criminalizing money laundering, the Swiss Government is considering partial reform of its federal bank secrecy laws which date back to 1934. In March 1991, the Swiss Justice Ministry proposed legislation that would enable anyone reporting suspicious financial transactions to avoid being charged with violating bank secrecy laws. The proposed legislation was drafted by an interdepartmental government task force and would eradicate the conflict plaguing financial institutions. This conflict occurs when institutions violate money-laundering statutes by failing to report illegitimate suspicious transactions, but violate bank secrecy laws by reporting suspicious transactions that later prove to be legitimate. The proposed legislation also grants greater powers for magistrates to seize allegedly laundered assets.

Switzerland has been increasingly willing to cooperate in international investigations by providing requested financial information. As a re-

106. See Art. 305ter, StGB (Swiss Penal Code); Zeldin, supra note 100, at 6.
107. See Zeldin, supra note 100, at 6.
108. See id.
109. See New, supra note 102. Under federal bank secrecy laws, persons who intentionally or negligently disclose customers' banking secrets in the absence of client consent or other limited circumstances shall be punished by a prison term and/or fine. See Peters, supra note 97, at 110 n.27 (referring to Federal Act Concerning Banks and Savings Banks, Art. 47, §§ 1, II (1934)); Haar, Money Laundering in the EC, Money Laundering L. Rep., Mar. 1991, at 1, 4. Banks that illegally disclose customer information face civil suits as well as potential loss of their license to operate. See Haar, supra, at 4.
110. See New, supra note 102.
112. See New, supra note 102.
113. See id.
114. See Fewer Secrets at Swiss Banks, Wall St. J., Mar. 18, 1991, at A10, col. 3. The Swiss Government may also require border declarations from international travellers carrying more than 100,000 Swiss francs. See Kochinke, The Swiss Working Group Recommendations on Moneylaundering, 6 Int'l Enforcement L. Rep. 188, 188 (May 1990); Swiss Weigh, supra note 111. Cf. Meltzer, supra note 5, at 241-43 (outlawing duty of individual under United States law (31 C.F.R. § 103.23(a) (1990)) to file a report (CMIR) with customs any time the individual enters or exits the United States with more than $10,000 in currency or other monetary instruments). For those individuals who fail to report funds as required, the Swiss government is considering empowering customs officials to freeze these funds at the border for three days while the source of the funds is determined. See Kochinke, supra. Swiss customs officials estimate that more than 135 million Swiss francs in cash enter the country each week. See Swiss Weigh, supra note 111.
115. See Mufson, supra note 97; Swiss Showing Readiness to Freeze Dictators' Assets, Wash. Post, Jan. 3, 1990, at A1, col. 1. For its cooperation with United States law enforcement agencies, Switzerland received $1 million from the United States government as its share of a penalty imposed on a foreign bank for money-laundering violations. See Narcotics-Related Money Laundering and Other Financial Transactions, Int'l Narc. Con-
suit of Articles 305bis and 305ter, foreign law enforcement authorities who investigate international laundering operations and seek information from Swiss banks will have greater success in obtaining this information through judicial intervention. In addition to providing foreign nations with requested information, Switzerland has demonstrated its willingness to cooperate with foreign nations in other arenas. The Swiss participated in drafting the FATF report and the Basle Committee statement and signed the Council of Europe Convention on money laundering in August 1991.

Swiss banks have also exhibited initiative in combatting money laundering. One significant effort is an agreement between the Swiss Bankers’ Association and the signatory Swiss banks to identify actual owners of deposits. This agreement (“CDB”) obligates signatory banks “to verify the identity of their contracting partners and, in cases of doubt, to obtain from the contracting partner a declaration setting forth the identity of the beneficial owner.”

In establishing business relations, if the
bank has any doubt that the contracting partner may not be the beneficial owner, then the bank agrees to exercise due diligence in obtaining a written statement, known as a "Form A." The Form A contains a certification by the contracting partner that the partner is the beneficial owner or, if not, discloses the identity of the beneficial owner. If a bank has "serious doubts" about the accuracy of this information that cannot be resolved through further inquiry, the bank agrees to terminate its relationship with the customer.

Pursuant to the CDB, persons prohibited from identifying beneficial owners due to rules regarding professional confidentiality were required to provide the banks with a different type of written statement, known as a "Form B." Third-party representatives of beneficial owners were

[122. See CDB, supra note 120, art. 3, at 8-9, reprinted in Trends and Forces, supra note 69, at 99.


124. See id. at 9 reprinted in Trends and Forces, supra note 69, at 99. Banks' successes in using Form A to ascertain the identity of beneficial owners has been questioned. Peters, supra note 97, at 116. The CDB does not provide guidelines as to what circumstances create "serious doubts" justifying further inquiry into or termination of the relationship with the customer. See id. Persons filling out Form A are not required to supply written documentation verifying the identity of the stated beneficial owner. See id. In reality, banks usually do not even make attempts to verify the accuracy of a customer's Form A that names a third party as beneficial owner. See id.

125. See CDB, supra note 120, art. 5, at 11-14, reprinted in Trends and Forces, supra note 69, at 100-02. In the absence of client consent or other limited circumstances, those persons who violate their oaths of professional confidentiality by revealing financial information regarding a client are subject to criminal sanctions of up to three years in prison and/or 40,000 Swiss francs in fines. See Peters, supra note 97, at 109 n.25. Form B is not
required to certify that they knew the beneficial owners and that, having 
exercised due diligence, they were not aware of any fact indicating that 
the owners were abusing bank secrecy laws or concealing criminally de-

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126. These Form B accounts preserved anonymity by permit-

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mitting bank clients to conduct their transactions through an attorney, 
notary, trustee, fiduciary, or asset administrator but were employed fre-
quently to launder criminal proceeds.127 To counteract this launder-
ing of funds, Form B accounts were restricted to cases where a profes-
sional's relationship to a client was not merely provisional and extended beyond 
the opening of an account.128 The professional agreed to supervise the 
transactions made in the account and to report to the bank any change in 
status or condition certified in the Form B.129 Despite these restrictions, 
however, the number of anonymous Form B accounts remained suspi-
ciously high.130 

To prevent money launderers from continuing to abuse this Form B 
loophole, the Swiss Federal Banking Commission ("EBK") issued a 
communique in May 1991 abolishing most anonymous bank accounts in 
Swiss banks.131 The EBK requires a written statement regarding the 
identity of the actual owners of existing Form B accounts by September 
1992.132 In addition, new account holders must have been identified and 
registered with the EBK as of July 1991.133 The EBK also established a 
task force to provide banks with clear guidelines for identifying clients.134 

To further reduce money laundering, the EBK developed a licensing 
system for bank note trading.135 Switzerland exchanges approximately
100 billion Swiss francs annually (eight percent of the world total) in foreign cash. To obtain a license under the new system, banks must prove that they have developed adequate safeguards to prevent the laundering of funds. The executive boards of these banks will be held responsible in the event of a violation, and bank auditors must supervise note trading more carefully. Regulations also require banks to investigate the character of trading partners and sever relations with customers suspected of criminal activity.

B. Great Britain

Like Switzerland, Great Britain's financial community had been used previously to launder illegal proceeds and has recently enacted measures to rectify this problem. The 1986 Drug Trafficking Offences Act makes the laundering of drug-related funds a crime. The 1986 Act imposes criminal sanctions on those who act or facilitate others, whom they know or suspect of drug trafficking, to retain, control, or invest the proceeds from their drug-related activities. The 1986 Act also imposes criminal sanctions on those persons, including financial institutions, who fail to inform law enforcement officials of any suspicion or belief that the funds or investments of another may be linked to drug trafficking. Sig-

banks, Union Bank of Switzerland, Swiss Bank Corp and Credit Suisse, are active traders of banknotes. See Swiss Bank, supra note 128.

136. See Time to Pay the Laundry Bill, supra note 105, at 7.
137. See id. at 8.
138. See id.
139. See Swiss Bank, supra note 128.
140. The National Drugs Intelligence Unit ("NDIU") in Great Britain has estimated that annual drug profits total roughly one billion British pounds which is available to be laundered through the country's financial institutions. See Nowinski & Bagge, supra note 9, at 29. Concern by bank regulators who fear the de-stabilizing of financial institutions and by law enforcement agencies who are fighting drug trafficking has enabled Great Britain to act quickly in passing legislation that will hinder money laundering. See id.; Elliott, From the Drug Barons to City Banks: Dirty Money Comes Clean, Sunday Telegraph, Jan. 14, 1990, available in LEXIS, World Library, ALLWLD File.
142. One can facilitate by concealment, by removal from the jurisdiction, by transfer to nominees, or otherwise. See id. at § 24(1)(a).
143. See id. at § 24(1). Under the 1986 Act, it is a defense if the accused can prove that he did not know or suspect that the proceeds were related to drug-trafficking or that the retention or control of drug-trafficking proceeds by another was being facilitated. See id. at § 24(4). In 1989, criminal sanctions that attach for facilitating another to retain or control funds were extended to instances where the funds relate to terrorist activity. See Prevention of Terrorism (Temporary Provisions) Act, 1989, ch. 4, § 11.
144. See Drug Trafficking Offences Act, 1986, ch. 32, § 24(1). Under the 1986 Act, it is a defense if the accused can prove that he intended to disclose his suspicion or belief to law enforcement officials but there was a reasonable excuse for his failure to do so. See id. at § 24(4). As of 1989, persons are also required to disclose their suspicions or beliefs regarding terrorist funds to law enforcement officials. See Prevention of Terrorism (Temporary Provisions) Act, 1989, ch. 4, § 11. In regard to serious criminal offenses other than drug trafficking or terrorism, persons, including financial institutions, have the right, but not the duty, to report their suspicions to law enforcement authorities. See Levi,
nificantly, those who report transactions known or suspected to involve laundered proceeds related to drug trafficking are insulated from any liability for breach of confidentiality.\footnote{145}

Under the 1986 Act, law enforcement authorities have been able to obtain complete access to a suspected drug trafficker's bank account.\footnote{146} Convicted drug traffickers are then subject to confiscation orders by British courts.\footnote{147} British courts have the authority to confiscate the proceeds that they believe are derived from a drug trafficker's entire illegal career.\footnote{148} In issuing the confiscation order, the courts may act on the rebuttable presumption that all of the trafficker's assets held during the past six years are derived from drug-related activity.\footnote{149}

Sanctions under the 1986 Act were endorsed by the 1990 Criminal Justice (International Co-operation) Act.\footnote{150} The 1990 Act attaches criminal liability for removing or assisting in removing from the jurisdiction property representing the proceeds of drug trafficking when the property is known or suspected to have been derived from drug trafficking.\footnote{151} The 1990 Act also empowers British customs officers and law enforcement authorities to seize cash they suspect is obtained through drug trafficking.\footnote{152} The 1990 Act also permits closer cooperation between the United

\footnote{Regulating Money Laundering, 31 Brit. J. of Criminology 109, 113 (1991); Money Laundering Measures Approved, supra note 38. 145. See Drug Trafficking Offences Act, 1986, ch. 32, § 24(3)(a). The absence of liability for good-faith disclosures is often referred to as the "safe harbor" policy. Despite the "safe harbor" policy, some financial institutions have turned to private investigatory agencies before disclosing suspect transactions to law enforcement authorities. See Boom Time for Investigators; Laws Open Up Banking Market, Thomson's Fin. Compliance Watch, May 10, 1991, available in LEXIS, World Library, ALLWLD File. In cases where financial institutions' suspicions fall below what they believe is required to report to law enforcement authorities, some of these institutions have relied first on discreet background checks conducted by private agencies. In this manner, financial institutions have complied with their investigatory duties and still maintained the confidentiality of their clients. If the private agency reports that the transaction appears to be related to money laundering, then the financial institution must notify law enforcement authorities. See id. 146. See Elliott, supra note 140, at 10. 147. See Zagaris & Bornheim, supra note 8, at 121; Secrecy Issues Slow Approval of Global Accords, Money Laundering Alert, Dec. 1989, at 7 [hereinafter Secrecy Issues]. In 1989, 29 confiscation orders for assets valued at almost six million British pounds were issued by British courts. See Elliott, supra note 140, at 10. One problem for law enforcement authorities in obtaining a confiscation order is that the court may only include those assets identified by authorities before the trial commences. Assets discovered after the commencement of trial may not be added to the confiscation order. See id. 148. See Secrecy Issues, supra note 147, at 7. 149. See id. British law enforcement officials often have difficulty in identifying assets before a trial so that they may be included in the confiscation order. See Elliott, supra note 140, at 10. 150. See Criminal Justice (International Co-operation) Act, 1990, ch. 5. 151. See id. at § 14(1),(2). 152. See id. at § 25(1); Authors, Measures on Drug Money Laundering Are Ruled Out, Fin. Times, Jul. 26, 1990, at 10, col. 2; Britain Says More Must Be Done on Money Laundering, Reuters, June 23, 1990, available in LEXIS, World Library, ALLWLD File [hereinafter Britain Says More]. The law, which applies to sums of 10,000 British pounds
Kingdom and other countries in money-laundering cases by allowing British law enforcement authorities to investigate, conduct searches, serve process, and temporarily transfer prisoners to foreign jurisdictions at the request of foreign authorities.\textsuperscript{153}

Pursuant to a 1990 government decision, British customs and law enforcement officials are not permitted to participate in "sting" operations\textsuperscript{154} to apprehend drug traffickers and money launderers.\textsuperscript{155} In one important case, however, these officials did assist in a United States "sting" operation to track and apprehend drug traffickers and money launderers.\textsuperscript{156} British customs and law enforcement officials have cooperated with countries other than the United States in similar pursuits.\textsuperscript{157} The British government has also entered into bilateral agreements with a number of other countries in order to provide mutual assistance in investigating and prosecuting drug-trafficking and money-laundering offenses.\textsuperscript{158}

or more, permits law enforcement officials to hold the cash for up to two years, subject to periodic authorization by the courts. See Colley, \textit{New Law Gives Customs Power to Seize Cash}, Press Ass'n Newsfile, Sep. 23, 1991, available in LEXIS, World Library, ALLWLD File. This seized property is subject to forfeiture if later proven in a court proceeding to represent the proceeds of drug trafficking. See Criminal Justice (International Co-operation) Act, 1990, ch. 5, § 26(1); \textit{supra} note 147 and accompanying text.


\textsuperscript{154} A "sting" operation is defined as "[a]n undercover police operation in which police pose as criminals to trap law violators." Black's Law Dictionary 1414 (6th ed. 1990).

\textsuperscript{155} The British government stated, "[P]olice and customs officers should not in any circumstances counsel, incite or procure the commission of a crime." See Authors, \textit{supra} note 152, at 10, col. 2.

\textsuperscript{156} One large international effort involved British and French customs and law enforcement authorities providing assistance to United States Customs officials in an investigation dubbed "Operation C-Chase." See Riddell, \textit{Money-Laundering Cash for UK}, Fin. Times, Nov. 9, 1990, at 5, col. 5; Bailey, \textit{A Case for the City to Close}, Daily Telegraph, Jan. 30, 1991, at 17, available in LEXIS, World Library, ALLWLD File. "Operation C-Chase" involved customs officials posing as money launderers and managing to infiltrate several Columbian drug rings. See Riddell, \textit{supra}. As a result of this investigation, a number of officials of the Bank of Credit and Commerce International (BCCI) were convicted in United States courts of money laundering and forfeited more than $15 million in BCCI funds. These seized assets were shared among the countries participating in the investigation, with Great Britain receiving three million dollars for its efforts.

See \textit{id}.

\textsuperscript{157} One effort, dubbed "Operation Diplomat," involved Great Britain cooperating with customs and law enforcement officials in the Soviet Union to track and confiscate more than eight million dollars of hashish. See England, Soviet Union Join to Block Drug Trafficking, \textit{Money Laundering Ring}, Money Laundering Alert, Jan. 1990, at 7.

\textsuperscript{158} Great Britain has bilateral agreements with a number of other nations, allowing for the mutual exchange of information and the lifting of bank secrecy obligations where a criminal link is suspected or proven. See Graham, \textit{supra} note 52, at 1, col. 3. These countries include the United States, Switzerland, Spain, Sweden, and Canada. See Elliott, \textit{supra} note 140, at 10. Since money-laundering investigations involving other foreign countries are often hindered by a reluctance in these countries to assist British investigators or by a banking system which prevents access to needed information, British drug-
Additionally, British banks, like their Swiss counterparts, have made significant efforts to curb money laundering. Reacting to the Basle Committee statement, the Bank of England issued a letter to all banks in Great Britain in late 1989. In this letter, the Bank of England warned that failure to possess adequate systems to detect money-laundering schemes would result in the revocation of banking licenses. The letter reminded the banks of their legal obligations to report suspicions and to cooperate with law enforcement officials. The letter also reminded banks of the “know your customer” principle advocated by the Basle Committee which applies to the laundering of all criminal proceeds and not solely those related to drug trafficking.

To supplement legal measures to curb money laundering, representatives of the British Bankers' Association, the Building Societies Commission, the National Drugs Intelligence Unit (“NDIU”) of Scotland Yard, and British customs and law enforcement agencies were brought together in a working group under the auspices of the Bank of England. This group, known as the Joint Money Laundering Working Group, was formed in the aftermath of both the Basle Committee and the G-7 FATF reports to develop guidelines for bank staff in identifying suspicious transactions. Efforts by the group resulted in the issuance of new guidance notes to British financial institutions in December 1990. Enforcement officials have put pressure on the British government to conclude mutual assistance agreements with these uncooperative nations. See id. Although British courts themselves, historically, have been less than willing to honor foreign requests for confidential bank information, this reluctance appears to be changing, and a shift in attitude towards cooperating with foreign authorities is apparent. See Levi, supra note 144, at 119. In a recent case, a British judge ruled that the Bank of England, acting on a request of a foreign regulatory authority, may require a bank to disclose documents despite a High Court injunction to the contrary. See Trying to Catch up with Global Markets, Fin. Reg. Rep., May 1991, available in LEXIS, World Library, ALLWLD File [hereinafter Trying to Catch].

159. See supra notes 69-83 and accompanying text.
161. See Bank of England, supra note 160; Banks Warned, supra note 160, at 28, col. 1. These systems are mandatory under Schedule 3 of the 1987 Banking Act, which delineates the minimum requirements to qualify for a banking license. See Banks Warned, supra note 160, at 28, col. 1.
162. See Bank of England, supra note 160; Banks Warned, supra note 160, at 28, col. 1. See supra note 76 and accompanying text.
163. See supra note 162 and accompanying text.
166. See Britain Says More, supra note 152. Suspicious transactions were defined by the group as those which are “inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account.” UK Banks, supra note 165, at 1.
notes establish standards and practices for the internal control and training of banking staff so as to avoid the laundering of criminal funds by financial institutions. The notes apply to branches of foreign banks operating in Great Britain. The head offices of British banks with overseas branches were requested to send the notes abroad even though these branches are bound by local laws. See UK Banks, supra note 167.

169. Banks should maintain account ledger records for six years and account opening records for five years to aid investigators in tracking the source and destination of suspect funds. See UK Banks, supra note 165, at 1.

170. Banks should obtain the true name, permanent address, date of birth, and nationality of all new customers. See UK Banks, supra note 165, at 1. Preferred official documents for verifying identification include passports, armed forces or signed employer identification cards, and driver's licenses. See id. Birth certificates alone were rejected as being too easy to obtain. See Bennett, Banks Hunt Drug Cash Launderers, The Times, Dec. 11, 1990, at 23, col. 2.

171. See UK Banks, supra note 165, at 1.
172. See id.; supra note 76 and accompanying text.
173. Regarding cash transactions, common schemes mentioned in the guidance notes include unusually large deposits followed by a transfer to an uncommon destination, frequent exchanges into foreign currency, use of different tellers to conduct large transactions, or uncommonly frequent transactions by bank branches. See UK Banks, supra note 165, at 1.

174. See id.
175. See id. In 1990, 1,700 reports of suspected drug money laundering were sent to the NDIU by financial institutions. See Identifying a Launderer, Bus. L. Brief, Jan. 1991, at 12. Once notified of a suspect transaction, officials of the NDIU proceed to examine criminal records and intelligence reports for leads. See Bailey, supra note 156, at 17. If further investigation seems necessary, these officials will try to obtain a production order from a circuit judge forcing the financial institution to provide the officials with account information for closer scrutiny. See id.; see also Levi, supra note 144, at 114 (financial institutions that refuse to comply with production orders can be held in contempt, thus subjecting bank officers to potential imprisonment). The NDIU estimates that 20% of the forms received result in the opening of a case or contributing to an ongoing case. See UK Banks, supra note 165, at 1. Regardless of the NDIU's findings, banks which report suspect transactions receive "Feedback Reports" on a quarterly basis from the NDIU informing them of the status of the reported transactions. See id.


notes inform insurers of laws and regulations concerning money laundering and suggest procedures that the insurance industry may implement to thwart laundering.\textsuperscript{178} Strict customer-identification procedures and recordkeeping methods to be implemented by insurers are also delineated in the notes.\textsuperscript{179} As with bankers, insurers are told to adhere to the "know your customer" principle.\textsuperscript{180} The notes also list several "single premium investments"\textsuperscript{181} that might be appealing to money launderers and describe situations which should arouse an insurer's suspicion.\textsuperscript{182} As with the banking notes, insurers are provided with a sample form to notify the NDIU of suspicious transactions.\textsuperscript{183} Although the Guidance Notes to the banking and insurance industries include many of the provisions of the EC Directive, the future of these notes is unclear since they are voluntarily implemented and not a statutory obligation as required by the Directive.\textsuperscript{184}

\section*{C. France}

In addition to Switzerland and Great Britain, France has enacted legislation designed to curb money laundering. In late 1987 and 1988, money laundering\textsuperscript{185} and the international transfer of funds related to drug trafficking\textsuperscript{186} were criminalized in France.\textsuperscript{187} These laws were

\textsuperscript{178} See id. Although money launderers appear, thus far, to have avoided transferring funds through the insurance industry, the notes were developed out of a concern that this situation may change in the near future. See id.

\textsuperscript{179} See id.

\textsuperscript{180} See id.

\textsuperscript{181} Examples of "single premium investments" mentioned in the guidance notes include "investment bonds, purchased annuities, lump sum 'top-ups' to an existing life contract, [and] lump sum contributions to 'personal pensions contracts.'" Id.

\textsuperscript{182} Some of these situations involve occasional business requiring the insurers to "provide an audit for suspicious funds," early encashment of "single premium policies," transactions where the source of the funds is unclear, or customers who are concerned with the early cancellation of a contract but not the performance of the investment. See id.

\textsuperscript{183} See id.

\textsuperscript{184} See Nowinski & Bagge, supra note 9, at 29. More recently, a committee led by the former head of the Bank of England has proposed a voluntary code of conduct to govern relations between a bank and its clients. See European Community, Thomson's Int'l Banking Reg., Sep. 20, 1991, at 9, available in LEXIS, World Library, ALLWLD File. The code, which might take up to a year to finalize, is expected to cover information on banking privacy, loans, and accounts and is designed to eliminate the need for further statutory regulation in these areas. See id.

\textsuperscript{185} See French Public Health Code, art. 627, § 3. This law made it a criminal offense to contribute knowingly to the laundering of drug proceeds. See Zagaris & Bornheim, supra note 8, at 121. Violation of the law is punishable by imprisonment for up to ten years and/or fines up to 500,000 French francs. See id. Other provisions of the law allow for the confiscation of drug proceeds upon conviction. See id.

\textsuperscript{186} See French Customs Code, art. 415. This law makes it a criminal offense to knowingly conduct financial transactions with foreign countries involving drug proceeds. See Zagaris & Bornheim, supra note 8, at 121. Violations of the law are punishable by imprisonment of up to ten years, confiscation of the proceeds in question, and fines ranging up to five times the amount of these proceeds. See id. In investigating and establish-
strengthened in July 1990 when the French government enacted a law that outlined the duty to disclose transactions related to the laundering of drug-trafficking proceeds. Pursuant to the new law, financial institutions have a duty to disclose the nature and amount of any transaction that they have a "reason to believe" involves drug proceeds. These institutions are to report their disclosures to a group established within the Finance Ministry which is responsible for further investigation. Institutions that fail to disclose suspicious transactions as required are subject to only administrative, not criminal, sanctions.

The 1990 law creates a distinct duty for those persons who direct capital movements or who counsel or control others in doing so. These "professionals" have a duty to disclose only those transactions that they "know" involve drug-related proceeds. Those falling within this category must disclose their findings directly to the Public Prosecutor and may be subject to criminal sanctions for failure to comply. The duty to disclose under the new law signifies a relaxing of French bank secrecy laws that were imposed by Article 378 of the Penal Code and Article 57 of the Banking Regulation Act of 1984. As a result, employees and officials of financial institutions who comply with the law can report suspicious transactions without fear of civil or criminal liability for breach of confidentiality.

The 1990 law also requires financial institutions to ascertain the identity of an account holder prior to the opening of an account. If the account holder is not the person benefiting from account transactions, the identity of the beneficial owner must be obtained. Furthermore,
financial institutions are required to identify any occasional customer engaging in a transaction greater than 50,000 French francs (approximately $9,000 U.S.). Failure to identify may result in the imposition of a fine or forfeiture of the involved assets. Finally, in the event that financial institutions find a transaction to be "complex or unusual," or apparently illegitimate, these institutions must retain detailed records of the transaction for a minimum of five years after the termination of the relationship with the customer.

D. Luxembourg

Long viewed as a popular haven for laundering funds, Luxembourg has taken measures to shed this reputation. Specifically, in the wake of a scandal involving a Luxembourg-registered bank, the Bank of Credit and Commerce International (BCCI), Luxembourg enacted strict legislation in July 1989 criminalizing money laundering. Pursuant to the new law, those individuals who knowingly conceal the criminal origin of drug-trafficking proceeds are subject to a prison term of up to five years and/or a fine not to exceed fifty million Luxfrancs (approximately $1.5 million U.S.). These criminal sanctions also apply to individuals in a professional status who knowingly or negligently assist in the laundering of drug proceeds. In addition, the law allows for the seizure and confiscation of laundered drug proceeds.

To prevent financial institutions from violating the new law through the negligent handling of laundered funds, the Luxembourg Money Institute (IML) drafted a circular in November 1989. The circular de-

201. See id.
203. See id.
204. See id.; Segal, supra note 187, at 256-57.
206. For additional information on scandals involving BCCI, see Note, Putting the Super Back in the Supervision of International Banking, Post-BCCI, in Annual Survey of Financial Institutions and Regulation, Transnational Financial Services in the 1990s, 60 Fordham L. Rev. S467, S478-89 (1992).
207. See Kellaway, supra note 205, at Lux.IV, col. 1.
208. See id.; Bank Secrecy, supra note 205, at 7.
209. See Kellaway, supra note 205, at Lux.IV, col. 1; Bank Secrecy, supra note 205, at 7. Banking and law are the two professions most greatly affected by the negligence standard. See Bank Secrecy, supra note 205, at 7. Bankers initially lobbied against the new law, complaining that the imposition of a prison term for unknowing involvement in drug money laundering was too severe. See id.; Kellaway, supra note 205, at Lux.IV, col. 1. These lobbying efforts eventually died down, and banks have accepted the new law with reluctance. See Kellaway, supra note 205, at Lux.IV, col. 1.
211. The IML supervises all financial institutions in Luxembourg. See id.
212. See id.
finishes the duty of due care to be observed by these institutions. The circular requires financial institutions to identify the beneficial owners of new accounts and to maintain records on these owners. Financial institutions also are required to monitor their customers' accounts and to refrain from any transaction which appears to be suspicious.

Despite the enactment of laundering legislation and regulations, Luxembourg has been reluctant to relax its bank secrecy laws. Instead, four months prior to criminalizing money laundering, Luxembourg strengthened bank secrecy laws through a national decree. Although strong bank secrecy laws make it difficult for foreign authorities to obtain banking information, Luxembourg recently has been more cooperative in foreign investigations against international launderers. In particular, Luxembourg has assisted the United States by seizing bank accounts owned by suspected drug traffickers and launderers. Luxembourg has also supported international efforts against money laundering through its participation in the FATF and its signing of the Vienna Convention.

E. Italy

Italy also has taken measures to curb its money-laundering problem by criminalizing the laundering of all illegal proceeds. Censis, Italy’s state agency on statistics, has estimated that the total annual revenue of organized crime is roughly $75 billion. It is widely believed that the

213. See id.
214. See id.
215. See id.
216. See id. The decree prohibits employees of financial institutions from disclosing customer bank records to local or foreign tax authorities. The decree also applies to employees of credit institutions and prevents information on individual deposit accounts from being disclosed to parent banks. See id. In addition, financial institutions cannot be compelled to disclose customer banking information to national law enforcement authorities unless it has been proved in a Luxembourg court that the customer is suspected of a criminal offence under Luxembourg law. See The BCCI Imbroglio: Predictable . . . and Predicted, Fin. Reg. Rep., July 1991, at 3.
217. See Bank Secrecy, supra note 205, at 7. Acting pursuant to bank secrecy laws, Luxembourg bank officials have traditionally refused to honor requests for customer information from foreign countries unless the request was made by foreign law enforcement officials working on a criminal investigation. See Zagaris & Bornheim, supra note 8, at 122. In a recent case, however, Luxembourg bank officials have been charged with violating the country’s bank secrecy laws by initiating contact with and providing customer information to foreign bank officials. See Gray, Court Threat to Bank Secrecy, Fin. Times, Jan. 16, 1992, at 2, col. 1.
218. See Bank Secrecy, supra note 205, at 7. The accounts of both former Panamanian dictator, Manuel Noriega, and a leader of the Colombian Medellin drug cartel were seized by Luxembourg officials at the request of the U.S. See id.
219. See supra notes 51, 84.
220. See Eurupdate, supra note 15, at 60; Eight Nations Join Financial Action Task Force, Money Laundering Alert, Nov. 1989, at 7 [hereinafter Eight Nations]. Initially, under Italian law, money laundering was a crime only if the proceeds had derived from more traditional organized criminal activity, such as kidnapping, robbery, or blackmail. See Zagaris & Bornheim, supra note 8, at 121.
221. See Eight Nations, supra note 220, at 7.
Italian mafia and Italian drug traffickers have infiltrated legitimate businesses and financial institutions in Italy. In response to these problems, a law was enacted in July 1991 requiring all customer transactions of more than twenty million Italian lire (approximately $15,000 U.S.) to be conducted through authorized intermediaries and by means of easily traceable instruments. Pursuant to this law, intermediaries must maintain a record of these transactions and are obligated to report them to government regulators. This new law, however, appears to have met with limited response from the Italian banking community. To improve this level of response, the Italian government is currently considering a proposal that would guarantee anonymity to bank employees who report suspicious transactions.

III. COMPARING AND EVALUATING RECENT INTERNATIONAL AND NATIONAL EFFORTS

In their efforts to curb money laundering in Europe, both international and European national fora employ a variety of methods. These methods can be grouped into a two-pronged model for combating money laundering. This two-pronged model encompasses both the actions to be carried out by national legislatures, courts, and law enforcement officials as well as the duties to be imposed on financial institutions.


223. See Italy, Thomson's Int'l Banking Regulator, Feb. 3, 1992, at 9, available in LEXIS, World Library, ALLWLD File; McDonald, Major Launderer Charged Under Italy's New Laundering Law, Money Laundering Alert, Dec. 1991, at 7. These intermediaries include authorized banks, post offices, credit institutions, brokerage houses, currency exchange agents, trust companies, and insurance firms. See Italy, supra; McDonald, supra. The list of specified traceable instruments includes non-transferable cashier's checks, credit cards, and money orders. See McDonald, supra.

224. See Italian Banks Pledge New Assistance to Government on Money Laundering, Thomson's Int'l Banking Reg., Nov. 22, 1991, at 6, available in LEXIS, World Library, ALLWLD File [hereinafter Italian Banks]; Follain, supra note 222. An intermediary is obligated to report those suspect transactions that "leads the intermediary to believe, based on objective criteria, that the... transaction could be the proceeds of... illegal activities." McDonald, supra note 223, at 7. Included within the list of "objective criteria" are transactions greater than twenty million lire. See id. Previously, member banks were obligated under the Italian banking association's anti-money-laundering codes to identify customers and maintain records for transactions over ten million Italian lire. See Zagaris & Bornheim, supra note 8, at 121; Eight Nations, supra note 220, at 7; Parmelee, supra note 222, at F1, col. 5. These banks were also required to register customers' passbook accounts, a common laundering device, and to terminate relations with customers who refused to cooperate. See Zagaris & Bornheim, supra note 8, at 121.

225. See Italian Banks, supra note 224, at 6; Follain, supra note 222. The Italian banking community has also opposed proposals for a centralized system for collecting bank information because of the costs involved and a fear that depositors would then send their money abroad to avoid surveillance. See Italian Banks, supra note 224, at 6; Follain, supra note 222.

226. See Follain, supra note 222.
A. The First Prong: Criminalization and the Power of Law
Enforcement Authorities and the Courts

The first prong focuses on the criminalization of money laundering and the power which law enforcement officials and the courts must possess to effectively investigate and prosecute these crimes. Many European nations have been reluctant to develop statutes criminalizing money laundering or to extend existing money-laundering statutes to cover the proceeds from all criminal activities.227 European nations also have differed on the scienter requirements necessary to constitute a violation of their money-laundering statutes.228 In maintaining the spirit of the EC Directive, these nations must work to enact legislation criminalizing money laundering to the broadest extent possible.229

Even with broad criminal statutes, practical difficulties will still exist in investigating and prosecuting money laundering within Europe. In most European nations, financial institutions are required to provide law enforcement officials, operating pursuant to a court order, access to suspicious accounts.230 However, these officials are frequently unable to persuade a court based on their reasonable suspicions to issue this order without first having access to the account.231 A remedy to this dilemma would be to reduce the burden of persuasion required of law enforcement officials. Yet, by providing law enforcement officials with easier access to

227. Only five EC countries presently have enacted legislation specifically criminalizing money laundering. See Eurupdate, supra note 15, at 60. As previously noted, France and Luxembourg have criminalized the laundering of proceeds derived from drug offenses, Great Britain has extended criminalization to cover drug offenses and terrorism, and Italy and Belgium have extended criminalization even further to cover all criminal activities. See id. Switzerland also has extended criminalization to cover all criminal activities. See supra note 102 and accompanying text. Cf 18 U.S.C. § 1956 (1988) (the United States has broad criminal laundering statutes which state that "[w]hoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, . . . [launders or attempts to launder this property] . . . shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both."); 18 U.S.C. § 1957 (1988) ("[w]hoever . . . knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished . . . [by fine, imprisonment for not more than ten years, or both]").

228. Some nations prosecute for negligent conduct, while others require a higher standard of intent, with knowledge often to be inferred from objective factual circumstances. See Trends and Forces, supra note 69, at 112. Cf. Fischman, Cash Complexities: Federal Laws Make Transactions Increasingly Convoluted, N.Y.L.J., June 12, 1991, at 35, col. 1 (discussing scienter requirements for violations of United States money-laundering laws under 18 U.S.C. § 1956 (requiring intent to promote the underlying illegal activity or knowledge of an illegal purpose of another’s transaction), 18 U.S.C. § 1957 (requiring only knowledge by the person conducting the transaction of the illegal source of the transacted funds), and 31 U.S.C. § 5324 (requiring “willful conduct” in structuring a transaction so as to cause a financial institution not to report a transaction or to report the transaction incorrectly)).

229. See supra note 20 and accompanying text.


231. See id.
customers’ accounts, the possibility of abuse of power and unnecessary intrusion into individual privacy is increased.\(^2\) This risk may be minimized by independent monitoring of law enforcement officials and stiff penalties for those officials who abuse their power.\(^2\)

Greater power also should be given to law enforcement officials in each European country to freeze and seize assets pending prosecution once an investigation reveals evidence of money laundering.\(^3\) Similarly, the power of the courts to order the confiscation of laundered proceeds should be extended to all European nations.\(^4\) The use of a European financial institution to deposit or transfer proceeds derived from criminal activity should automatically render these proceeds forfeitable.\(^5\)

These practical difficulties are magnified when investigations and prosecutions require corroboration between nations. International cooperation is essential to effectively eliminate money laundering, and attempts must be made to facilitate cooperation.\(^6\) European countries should increase efforts to enter into mutual cooperation agreements with countries which have not been cooperative in the past.\(^7\) In requesting financial information from other nations, European law enforcement officials should be able to obtain access to this information without first having to prove the crime.\(^8\) Law enforcement officials in Europe should cooperate with one another in freezing and seizing assets that are reasonably believed to be related to laundering activity.\(^9\) Similarly, formal and informal barriers to obtaining confiscation orders from courts in foreign jurisdictions should be eradicated.\(^10\)

\(^2\) For an argument against providing law enforcement officials with greater access to customers’ accounts, see Levi, supra note 144, at 122-23 (as a result of routine exchanges of information between British banks and law enforcement agencies, “the foundations for the international finance-police state are being laid.”).

\(^3\) R. Clutterbuck, supra note 230, at 157.

\(^4\) See id. at 195; supra notes 47, 61, 90, 152 and accompanying text.

\(^5\) See supra notes 47, 61, 89, 152 and accompanying text.

\(^6\) Cf. 18 U.S.C. §§ 981-82 (1988) (allowing for forfeiture of criminal funds that are deposited in or transferred through a financial institution as well as the forfeiture of any property traceable to these funds).

\(^7\) “[M]oney laundering . . . can only be handled on a multi-jurisdictional basis.” Trying to Catch, supra note 158. See also Hearings before the Subcomm. on Terrorism, Narcotics and International Operations of the Senate Comm. on Foreign Relations, 101 Cong., 1st Sess. 7 (1989) [hereinafter Senate Hearings] (statement of Terence M. Burke, Asst. Administrator, DEA).

\(^8\) “The growing network of bilateral cooperation agreements . . . undoubtedly makes life more difficult for criminals and fraudsters.” Trying to Catch, supra note 158. See also Banoun & Lerner, As International Barriers Begin to Crumble, United States Evidence-Gathering, Probing Get Easier, Money Laundering L. Rep., Aug. 1991, at 4 (as more countries become willing to cooperate, United States prosecutors will be better able to obtain evidence from foreign jurisdictions through Mutual Legal Assistance Treaties (MLATs) and letters rogatory (letters of request)).

\(^9\) See R. Clutterbuck, supra note 230, at 195. Such access, however, should be subject to judicial safeguards to prevent abuse. See id.

\(^10\) See supra notes 47, 61, 90 and accompanying text.
As long as some nations are unwilling to comply with efforts to eliminate money laundering, money laundering will persist. Most European nations have been slow to develop or amend their legislation and regulations to comply with international efforts to thwart money laundering. For example, several European nations have voiced their opposition to outside pressure to sign bilateral agreements on the exchange of bank record information. These nations view these agreements as an unnecessary intrusion into their banking practices. For those nations that are protective of their banking sovereignty and history of secrecy, the equitable distribution of confiscated proceeds among cooperative countries ("asset sharing") should be promoted as a means of encouraging these nations to join in the international effort to combat laundering.

B. The Second Prong: Duties of Financial Institutions and Relaxation of Bank Secrecy Laws

The second prong of this two-pronged analysis focuses on the duty of financial institutions to "know your customer" and emphasizes the need to eliminate the obstacles to disclosure presented by bank secrecy laws. Under this prong, financial institutions have a duty to identify clients, examine transactions, and report those transactions which involve or appear to involve the laundering of proceeds. This European reporting system represents a rejection of the United States system to prevent money laundering which requires the reporting of all transactions over ten thousand dollars.

242. Money launderers remain "one step ahead" of legislation designed to foil laundering efforts" by transferring their funds through less-monitored institutions and facilities in countries that have strict bank secrecy laws and are unwilling to cooperate with requests for banking information. See Global Money Laundering Rules Seen Needed to Reduce Drug Profit Flows, Int'l Fin. Daily (BNA), Mar. 28, 1991, available in LEXIS, World Library, ALLWLD File [hereinafter Global Rules]; see also Trying to Catch, supra note 158 ("as long as there is any jurisdiction which lies outside the cooperative framework, it will remain possible for sophisticated players to avoid detection"); Debusmann, U.S. Wins Battles But No Victory on Drug Finances, Reuters, Aug. 31, 1989, available in LEXIS, World Library, ALLWLD File (drug traffickers can always turn to offshore banking havens with tight secrecy laws to launder their funds). Many poorer countries that are desperate for hard currency must compete with one another for needed funds and are far from vigilant in examining not only bank customers but also the purchasers of banks. See Levi, supra note 144, at 112-13. Corruption, commercial competitiveness, and poorly trained bank regulators all contribute to this lack of vigilance. See id.

243. See Council of Europe, supra note 20, at 7; see also US Sees Problems in Multilateral Drug-Money Talks, Reuters, Nov. 15, 1989, available in LEXIS, World Library, ALLWLD File [hereinafter US Sees] (as one British diplomat stated, "By no other means do all other countries think the U.S. model is the right way to go.").

244. See Council of Europe, supra note 20, at 7.

245. The U.S. State Department has called for increased usage of asset sharing in order to encourage foreign countries to cooperate in anti-money-laundering efforts. See Narcotics-Related Money, supra note 115, at *13.

246. For an article clearly detailing the United States reporting requirements under the Bank Secrecy Act of 1970 as amended by the Money Laundering Control Act of 1986 (18
Although the compliance and administration costs may not be as great as under the American system,247 a system of money-laundering prevention that relies on financial institutions to identify customers and report suspicious transactions presents its own difficulties. Institutions which stand to lose business by tarnishing their reputation for confidentiality have an incentive to withhold information or seek loopholes in disclosure laws and regulations.248 Conversely, those financial institutions which fear incurring sanctions for failure to report suspicious transactions have an incentive to violate a customer's banking confidentiality unnecessarily by reporting all transactions which are only marginally suspicious.249

For the European reporting system to be effective, financial institu-

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247. Naturally, however, there are costs under the suspicious reporting scheme which must be borne in part by bank customers and shareholders. See Levi, supra note 144, at 122.

248. See R. Clutterbuck, supra note 230, at 117. See also Levi, supra note 144, at 112 (although they don’t borrow money or make long-term deposits, “[u]ndetected money launderers are good business for bankers . . .” because they provide banks with liquidity and pay bank charges). Bankers often rationalize their reluctance to carefully identify potential customers by acknowledging that, in competitive national and international markets, these customers will simply take their business to other banks where the employees are less conscientious and law-abiding. See id.

tions must be held liable for failure to disclose suspicious transactions as required.250 Policies on reporting must be clearly delineated within these institutions, and internal controls and procedures to prevent complicity in money laundering must be in place.251 Financial institutions that refuse to implement these controls and procedures should face the loss of their license or charter.252 Bank employees must be carefully screened before being hired and must be trained to detect large or unusual transactions likely to involve money laundering.253 These employees, as well as bank officers and directors, should incur personal liability for their failure to comply with disclosure requirements.254 In addition, compliance officers should be chosen to safeguard the detection and reporting

250. Compare Meltzer, supra note 5, at 243-45 (outlining criminal and civil liabilities for financial institutions in the United States that fail to exercise due care in meeting their reporting requirements) and U.S. Banks Seek UK-Style ‘Safe Harbor’ Protection, Money Laundering Alert, Jan. 1991, at 6 [hereinafter U.S. Banks] (United States is only nation which permits criminal conviction of a financial institution based on the criminal conduct of one or its employees acting within the scope of employment) with Villa, A Critical View of Bank Secrecy Act Enforcement and the Money Laundering Statutes, 37 Cath. U.L. Rev. 489, 490 (1988) (arguing that harsh penalties on United States financial institutions to ensure compliance with reporting laws may be counter-productive because of failure to distinguish between intent to violate law and negligence in observing law) and Hamman, supra note 246, at 8 (“the price [for failure to comply with reporting requirements] may be too high.”).


252. See supra note 161 and accompanying text. In the United States, a proposed bill authorizing the revocation of the charter of any depository institution found guilty of money-laundering offenses is currently winding its way through Congress. See H.R. 26, 102nd Cong., 1st Sess. (1991).

253. See Trends and Forces, supra note 69, at 111; Manuel, supra note 251, at 1. Even a well-trained staff, however, may have difficulty in detecting money laundering when launderers intentionally structure their transactions to avoid the suspicions of bank staff. For example, in the United States, to avoid the banks’ mandatory reporting requirements for transactions above ten thousand dollars, launderers intentionally structured their transactions to keep them below the reporting threshold. See Meltzer, supra note 5, at 233-35. The process was referred to as "smurfing" and usually involved one or a number of persons going to different tellers or banks over a short period of time and making deposits just below the $10,000 level. See id. at 233. Faced with the success of "smurfs" in circumventing bank reporting requirements and the reluctance of some courts to hold "smurfs" criminally liable, the United States Congress finally criminalized such activity in 1986. See id. at 233-34; see also Welling, Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions, 41 U. Fla. L. Rev. 287, 304-26 (1989) (referring to 31 U.S.C. § 5324 (the anti-structuring provision of the amended Bank Secrecy Act of 1970)); Fischman, supra note 228, at 35, col. 1 (same). Yet, difficulties in detecting and investigating laundered funds that have been intentionally structured remain. See Welling, supra, at 339; see also Meltzer, supra note 5, at 235 n.18 (referring to United States Treasury Department proposals requiring banks to develop systems to facilitate the detection of "smurfing" activity).

254. Cf. Meltzer, supra note 5, at 243-45 (under United States law, any bank officer or employee who willfully violates reporting requirements is subject to civil (31 U.S.C. § 5321(a)(1); 31 C.F.R. § 103.47(f)) and/or criminal (31 U.S.C. § 5322(a); 31 C.F.R. § 103.49) penalties).
Bank employees and officers also should pay particular attention to those transactions involving the use of international wire transfers. Because they are quickly executed and difficult to monitor, international wire transfers have become an increasingly popular means of laundering criminal funds. These transfers between financial institutions often include only the order to move funds and omit other transaction information. To prevent international wire transfers from facilitating money laundering, banks might require that these transfers contain other information, such as the name, address, and account numbers of the customer sending the funds, the customer receiving the funds, and any third-party beneficiary for whom the transaction is being executed. Bank staff could also be required to adhere to “know your customer” guidelines in identifying the customer and verifying the legitimate nature of each wire-transfer transaction. By creating a profile of suspect international wire transfers, financial institutions would be able to detect transfers of illegal funds.

255. See Trends and Forces, supra note 69, at 111; Manuel, supra note 251, at 1; see also New Money Laundering Guide; Compliance Officers Urged to Act, Thomson's Fin. Compliance Watch, May 3, 1991, available in LEXIS, World Library, ALLWLD File (as one compliance officer stated, “It is widely regarded as the role of the compliance officer to make employees aware of the dangers of money laundering and to design defences against such illegal activities”); Fischman, supra note 228, at 35 (in the United States, “a compliance officer is necessary to understand the federal statutes, make sure they are followed, [and] provide regular staff training on the reporting requirements.”).

256. See Note, Recordkeeping and Reporting in an Attempt to Stop the Money Laundering Cycle: Why Blanket Recording and Reporting of Wire and Electronic Funds Transfers is Not the Answer, 66 Notre Dame L. Rev. 863, 864 (1991) [hereinafter Recordkeeping and Reporting]. Compare Kerry Leads Senate Crackdown on Dirty Money; Proposals Could Hold Serious Implications for All Financial Institutions, Money Laundering Alert, Nov. 1989, at 6 [hereinafter Kerry Leads] (monitoring of all wire transfers needs to be improved) with Bankers Criticize Treasury's Proposed Wire Rules, Money Laundering Alert, Mar. 1990, at 5 [hereinafter Bankers Criticize] (increased monitoring of wire transfers should be limited to funds transfers that are likely to relate to drug trafficking).

257. Wire transfers “have emerged as the primary method by which high-volume launderers ply their trade.” Meltzer, supra note 5, at 246.

258. See id. at 248.

259. This proposal was promulgated by the United States Treasury Department. See id.; see also Focus on Drug Money, Report Urges, Money Laundering Alert, Mar. 1990, at 6 (United States Senate report calls for standardizing customer information on international wire transfers). This Treasury proposal evoked near unanimous protest in the United States banking community over the burdens, cost, and utility involved in additional recording and reporting requirements on international wire transfers. See Cost, Utility of Wire Transfer Regulation Questioned; Broad Spectrum of Financial Institutions, Associations Pose Opposition, Money Laundering Alert, Feb. 1991, at 6; see also Bankers Criticize, supra note 256, at 5 (regulations requiring added information on international wire transfers would be ineffective, unnecessarily burdensome, and difficult to implement since laws in many foreign countries prohibit them). As the Treasury Department prepares to issue its final version of these rules, bank officials now have reason to believe that their complaints have been heeded and that the new recordkeeping regulations will not be as onerous and costly as originally anticipated. See Kimery, Bankers Prepare for Final Treasury Rule on Fedwire, CHIPS Transaction Reporting, Regulatory Compliance Watch, Feb. 3, 1992, at 3, available in LEXIS, World Library, ALLWLD File.

260. See Meltzer, supra note 5, at 248-49; Recordkeeping and Reporting, supra note
funds with greater ease.  

The duty of financial institutions to report suspicious transactions mandates the relaxing of bank secrecy laws. Common sense dictates that, without easing bank secrecy laws, financial institutions and their employees who risk civil or criminal liability for reporting legitimate transactions will be reluctant to make such reports. By preventing law enforcement officials from obtaining information from financial institutions, bank secrecy laws are a great impediment to combating money laundering. To remove this impediment, a “safe harbor” policy must be implemented in all European countries to exempt these institutions and their staffs from liability when a report has been made promptly and in good faith.

With this in mind, a well-implemented “know your customer” policy may succeed in reducing money laundering in a number of ways. First, potential felons may be reluctant to launder their funds knowing they will have to identify themselves. Second, the investigation into a potential customer’s identity may reveal information that warrants an institution’s refusal to conduct business with a customer. Third, the identification process provides the institution with information to determine whether a customer’s transactions appear to be consistent with this information and with customary activity for one in a similar situation. Fourth, and most importantly, criminal activity from which proceeds available for laundering are derived may decrease as launderers find it increasingly difficult to conceal their identity and the origin of their funds.

C. Alternative Measures

In addition to the efforts previously noted, other measures that would

256, at 865; Senate Hearings, supra note 237, at 39 (statement of Earl B. Hadlow, Chairman, ABA Money Laundering Task Force).
261. See Meltzer, supra note 5, at 249.
262. See supra notes 33-34, 45, 56, 94, 109-113, 145, 197-98 and accompanying text. But see supra note 216 and accompanying text (Luxembourg’s refusal to relax bank secrecy laws).
263. In the United States, the possibility of civil suit or government prosecution against financial institutions for reporting suspicious transactions discourages such disclosures. See Villa, supra note 250, at 506-08.
264. See supra note 145; cf. U.S. Banks, supra note 250, at 6 (noting under United States law that banks which report suspicious transactions increase their likelihood of being investigated and prosecuted by the government).
265. See Meltzer, supra note 5, at 239.
266. See id.
267. See id.
268. Compare Levi, supra note 144, at 123 (“there may be some overall diminution of criminal activity as the barriers to entry into the international laundering game prove too burdensome for many potential or existing players”) with Bailey, supra note 156, at 17 (since each of the major players on the drug trafficking food chain can make more than a two hundred percent profit on his or her investment, the economic incentive to break the law can far outweigh any potential risks of detection or forfeiture).
help to prevent money laundering in Europe should be considered and implemented if worthy. One such measure is the creation of an international monitoring agency with the jurisdiction and means to track and investigate suspect transactions.\footnote{269} Another measure would entail a boycott among European nations.\footnote{270} This boycott would prohibit a bank from conducting transactions with a foreign bank in a country that does not have existing measures to fight money laundering and that refuses to be inspected by a monitoring agency.\footnote{271} A final measure to be considered would involve the increased use of modern computer systems and advanced technology, such as bar codes on currency, to detect and investigate illegal transfers of funds.\footnote{272}

\footnote{269} See R. Clutterbuck, \textit{supra} note 230, at 117-18; Trends and Forces, \textit{supra} note 69, at 112. This monitoring agency could be developed along the lines of FOPAC or FinCEN. FOPAC, a French acronym for “Funds from Criminal Activities,” was founded as a unit of Interpol in 1983 to serve as a clearing house for international information on the movement of criminal proceeds. See \textit{Interpol Becomes Catalyst in Worldwide Movement to Investigate Illicit Money}, Money Laundering Alert, Jan. 1990, at 7. FinCEN, an American acronym for the Financial Crimes Enforcement Network, was established as a unit of the United States Treasury in 1989 to serve as a centralized intelligence network for receiving and analyzing information on money laundering. See \textit{id.}; see also \textit{Narcotics-Related Money}, \textit{supra} note 115, at *15 (FinCEN “has helped initiate cases, obtain information crucial to investigations and forfeiture actions, and locate fugitives and suspects”). Recently, EC ministers took a step in this direction by agreeing to establish “a Europe-wide police intelligence agency to be known as ‘Europol.’” Hirschler, \textit{EC Agrees to Set Up “Europol” Police Intelligence Body}, Reuters, Dec. 3, 1991, available in LEXIS, World Library, ALLWLD File. This agency was formed to receive and examine data on cross-border crime and would begin its work by focusing on drug trafficking and money laundering. See \textit{id.}

\footnote{270} See R. Clutterbuck, \textit{supra} note 230, at 156.

\footnote{271} See \textit{id.} The boycott could be enforced by each nation adopting currency exchange controls that prohibit the transfer of funds to a foreign bank in a noncompliant country. See \textit{id.} The inherent difficulty in developing and maintaining a multilateral consensus to boycott places the practicality of this suggestion in jeopardy. A proposed amendment to the EC Directive that was later rejected called for the European Commission and member states to be given the authority to order the suspension of international funds transfers to countries outside the EC that are suspected of money laundering and have not acted to curb this practice. See \textit{Banking: Parliament Called On To Adopt Amendments to Money Laundering Directive}, \textit{Eur. Rep.}, Nov. 17, 1990, available in LEXIS, World Library, ALLWLD File. Under Section 4702 of the United States Anti-Drug Abuse Act of 1988, sanctions are to be applied against financial institutions in specified foreign countries that refuse to negotiate in good faith over agreements to exchange bank record information. See \textit{US Sees}, \textit{supra} note 243 (referring to P.L. 100-690). This threat of sanctions, however, has apparently failed to intimidate these countries into signing an agreement with the United States. See \textit{Secret U.S. Report Reveals Only One Other Country Signed}, Origin Univ. News Serv. Ltd., Dec. 13, 1990, available in LEXIS, World Library, ALLWLD File.

\footnote{272} See R. Clutterbuck, \textit{supra} note 230, at 118. In the United States, one senator proposed placing computerized bar codes on currency as an inexpensive and effective means of tracking currency to apprehend launderers. \textit{Kerry Leads}, \textit{supra} note 256, at 6. The FATF rejected the idea of tracking funds by the electronic “tagging” of currency as being too costly to implement. See Graham, \textit{supra} note 52, at 1. Sophisticated computer programs are used by FinCEN to analyze banking records and data compiled by United States government agencies. See Vorman, \textit{Banks Feel U.S. Pressure to Halt Money Laundering}, Reuters, May 2, 1990, available in LEXIS, World Library, ALLWLD File. Com-
In implementing the provisions of the EC Directive and the other international agreements discussed in this Note, the nations of Europe will demonstrate their commitment to fighting and winning the war against international money laundering. In following the two-pronged model, these nations must act to criminalize laundering activity, to empower law enforcement officials and the courts to freeze, seize, and confiscate laundered proceeds, and to develop cooperative agreements with other nations to facilitate the investigation and apprehension of launderers. Asset sharing should be used to encourage resistant nations to cooperate.

In addition, European financial institutions must be required to implement “know your customer” policies, to identify the beneficial owners of large or suspicious transactions, and to report all suspicious transactions to the appropriate authorities. To this end, financial institutions must adequately train their staff to detect suspicious transactions and establish clear guidelines and procedures to prevent bank involvement in laundering schemes. Proposals to improve the monitoring of cross-border funds transfers, whether through wire transfer or otherwise, also should be instituted. Finally, in reporting suspicious transactions promptly and in good faith, bank employees and officers, as well as the institutions themselves, should be relieved of liability under existing bank secrecy laws for disclosing customer banking information.

In implementing these measures, European nations must be responsive to the need of financial institutions to remain competitive in national and international markets. These nations also must be responsive to the legitimate desires of businesses and individuals who wish to preserve some degree of financial confidentiality. By recognizing these concerns, money laundering throughout Europe can be reduced most effectively and a strong and unified market for European financial services can be preserved.