

Position of the IVD Real Estate Association on the Amendment of the EU Money Laundering Directive Submitted to the European Commission and the European Parliament within the Context of the Revision of the Money Laundering Directive

Status: 16 October 2012

Position of the IVD as a professional association in Germany and Europe

The IVD Real Estate Association is the professional organization for real estate related professions such as real estate agents, property managers and real estate experts. Approximately 50% of all real estate agencies active in the German real estate brokering business are members of the IVD. The IVD is a member of the European associations CEI and CEPI, which represent the joint interests of real estate related professions in Europe.

Implementation of the money laundering directive and national regulations

The IVD Real Estate Association expressly supports measures taken to prevent the flow of illegal funds, which certainly also find their way to Germany, and thus present a national and international risk to Germany as a legal and economic location.

National particulars are not adequately taken into account in the Money Laundering Directive

The IVD therefore believes it is important that existing implementation deficits present in the current Money Laundering Act as they relate to the real estate area are addressed within the context of the German legal system. Please note that the Financial Action Task Force on Money Laundering (FATF) has also recognized the implementation deficits of the legal requirements in Germany. Other countries with legal frameworks for the professional practices of real estate agents have also exerted their influence in the FATF. Representatives from other countries may consider certain brokerage activities in Germany as a deficit in the implementation of the Money Laundering Act; they are, however, consistent with the particulars of the German legal system. A different Agency Law and therefore different activities also require adjustments and/or other interpretations of the Money Laundering Act, otherwise, the activities of German brokers are severely limited, and a shift toward unregulated private sales will take place.

IVD requests relating to the revision of the Money Laundering Act

The IVD is advocating an improved definition of the term “contracting partner” in the EU Money Laundering Directive to show that a contracting partner is only a party, which will ultimately also pay the provider of a good or service, etc.

The focus on the point in time during which the due diligence obligations are met must be replaced by an understanding that an identification and check takes place within the context of the service to be provided. Different from providers of goods, service providers have contact with the customer not just once, but over the course of a longer period of time. Consequently, the triggering event for the execution of the identification can also take place during a prolonged contact.

The IVD further proposes to strengthen the Directive’s “trust-based rules”. Based on these rules, an obligated party may trust that another obligated party will take care of the general due diligence obligations required to prevent money laundering (also refer to the statement by CEI and CEPI about the Money Laundering Directive).

In the real estate business, this is very plausible in view of the cooperation of real estate agents and notaries and/or financial institutions. This avoids duplicate identifications. The tremendous bureaucratic effort involved in multiple identifications and identity checks as well as the respective archiving and supply of documents relating to supervisory measures would be decreased. It should also be mentioned on the side that German real estate agents are not involved at all in the financial transactions relating to the purchased property. In Germany, this is the responsibility of the notary.

The IVD would therefore request that the supervisory reporting systems be standardized.

View of the role of a real estate agent in the EU Money Laundering Directive

It must be emphasized that the overall tenor of the EU Money Laundering Guideline, which is significantly characterized by the ideas and suggestions of the FATF, is based on the view that the real estate agent only represents one party. In the Anglo-Saxon realm, real estate agents always only represent one party. This means that, during the acquisition of a real property, only one side, either the seller or the buyer, is represented. Based on this approach of an acting real estate agent, it is easy to determine who the real estate agent’s customer is because there is only one principal. Consequently, the real estate agent’s contracting partner is always this single principal. Generally, it is the seller. If a real estate agent specializes in representing the buyer’s interests, as is often the case in the United States, the real estate agent’s customer in this case would be the buyer.

In the United States, the real estate agent only has one “contracting partner” and therefore only one party, which will ultimately pay the real estate agent. In this regard, the perception of a real estate agent, who only represents one party, is much more similar to a broker of goods, who also only has one “contracting partner”.

In Germany, however, the real estate agent’s business relationship is characterized by a number of potentially interested buyers. In the end, however, the real estate agent can sell the real property only to one interested party. This view basically does not exist in the AMLD or the Money Laundering Act.

View of the role of a real estate agent in Germany

The EU Money Laundering Directive, which is based on the view that a real estate agent only represents the interests of one party, must now be implemented by countries as national law, where real estate agents have a different position. The perception of the German lawmakers when they created the agency law provisions in the German Civil Code was that of a broker, who brings two parties together and who provides to both parties the opportunity to enter into an agreement with regard to the real property.

Going forward, the Money Laundering Directive must, therefore, cover the provision of services for just one principal just as much as the provision of brokerage services. So far, that has not happened.

The Money Laundering Directive must furthermore provide that not every party interested in a real property falls under the customer due diligence, but only the party that engages in serious negotiations for the end product (the real property). Providers of goods are also not obligated to identify and check the identity of anyone who passes by their display windows and shows an interest in the products.

It would also significantly contribute to the legal certainty of national lawgivers, if the Money Laundering Directive were to be amended in this regard.

Real estate agent’s role in the fight against money laundering in Europe

The requirements for real estate agents in Europe with regard to the fight against money laundering differ significantly. This was determined by the European Association of Real estate agents CEI (Confédération Européenne de l’Immobilier – www.webcei.com) in cooperation with its national member associations. The impression is that some national lawmakers in Europe want to use real estate agents as detectives in the fight against money laundering.

The IVD is vehemently opposed to this utilization of real estate agents.

The President of the CEI, Manuel Negrao, stated in this regard in an address to the national member associations:

The now pending revision of the European Money Laundering Directive must absolutely take into account that real estate agents are only given obligations with regard to areas where they actually have access to customer information. So far, the directive is worded in such a manner that in some countries data must be obtained from interested parties who only have shown an interest in a property, but who have not yet stated any more serious buying intentions.”

The European real estate agents are aware of their obligations and take them very seriously. International real estate transactions and the activities of real estate agents in other European countries, however, are made much more difficult by the inconsistent regulations. The EU is asked to create uniform standards.

The CEI also confirms: “The customer is the party that pays the real estate agent”

We are expecting from the revision of the EU directive that it will better address the particulars involved in the brokering of real property, which would start with the definition of who a real estate agent’s customer is. The national regulations in the individual European countries have regulated this issue in different ways. The EU directive could serve to provide a simple clarification. A real estate agent’s customer is the party that ultimately pays the real estate agent (i.e. is responsible for paying the commission for the successful brokering of a real property). This way, the EU directive would clarify that not just any contact with a real estate agent, and not every piece of information about a real property falls in the scope of the money laundering provisions.

Trust rules

The IVD joins in the request that the identification and the checking of customer data does not have to be performed, if this is being done by another institution working with the real estate agent. Going forward, the EU directive must allow real estate agents to work together with notaries and banks in such a manner that they can trust the identification of customers that is done by them regardless. Especially in those European countries where the conclusion of a sales contract is mandatory for the purchase of a real property, the real estate agent can rely on the identification of the customer that is performed in this context. In the cooperation with a bank financing the purchase of a real property, such a trust rule would also make sense.

The IVD recommends that the identification obligation be fully transferred to the notary, since the notary is obligated by law to perform such identification and to handle the transfer of funds.



Immobilienverband Deutschland IVD
Bundesverband der Immobilienberater,
Makler, Verwalter und Sachverständigen e.V.
Littenstraße 10
D - 10179 Berlin
Phone: +49 (0) 30 – 27 57 26-0
Fax: +49 (0) 30 – 27 57 26-49
e-mail: info@ivd.net
<http://www.ivd.net>

European Council of
Real Estate Professions
Avenue de Tervueren 36 bte 2
B - 1040 Bruxelles
Phone: + 32-2-735.49.90
Fax: +32-2-735.99.88
e-mail: cepi@cepi.eu
<http://www.cepi.eu>

Confederation Europeenne de l'Immobilier
Clos DU Parnasse 3a
B-1050 Brussels
Phone: +32-2-6396231
Fax: +32-2-6449017
e-mail: info@ceieurope.eu
<http://www.webcei.com>