ANTI-MONEY LAUNDERING LAW

1. Introduction

The anti-money laundering regulatory framework is complex and articulated, since it is composed of regulatory sources of primary, community and internal rank, regulatory sources of sub-primary rank, as well as the rules expressed by the representative bodies of the categories affected by the obligations prescribed by the discipline de qua.

Among the primary community sources it is worth noting those currently in force, namely the directive n. 2005/60 / EC, of 26 October 2005[1] and the directive n. 2006/70/CE, of 1° august 2006[2], as well as those that have been repealed and that represented the first legislative interventions on the subject, namely the directive n. 2001/97 / EC, of 4 December 2001 and the directive n. 91/308 / EEC, of 10 June 1991.

The interventions of the Community legislator took place to collect the indications contained in the FATF recommendations, which were issued to counter money laundering of the proceeds of criminal activities and the financing of terrorism.

The FATF (International Financial Action Group), or FATF (Financial Action Task Force) is an international body established in 1989, on the occasion of the G7 in Paris, composed of thirty-four States, two regional organizations (European Commission and Cooperation Council of the Gulf), as well as observers (IMF, ECB, World Bank, United Nations, Europol, Egmont).

This body was founded with the aim of monitoring the phenomenon of money laundering, to develop the strategies necessary to prevent it and to combat it and, subsequently, starting from 2001, it also took an interest in the fight against the financing of terrorism, up to, in 2008, to deal with the financing of weapons of mass destruction.

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[1] Relativa alla prevenzione dell'uso del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo.

[2] Recante misure di esecuzione della direttiva 2005/60/CE del Parlamento europeo e del Consiglio per quanto riguarda la definizione di «persone politicamente esposte» e i criteri tecnici per le procedure semplificate di adeguata verifica della clientela e per l'esenzione nel caso di un'attività finanziaria esercitata in modo occasionale o su scala molto limitata.

More specifically, the FATF observes the various national legal systems and identifies the countries that present the greatest problems in their systems for preventing and combating money laundering and terrorist financing and, in this regard, prepares guide lines and best practice documents aimed at to suggest more effective measures and measures to combat these illegal activities.
The FATF has published a series of recommendations, which are not legally binding since they are of soft law nature, but which have been welcomed by a substantial number of countries and recognized as international standards by the World Bank, by the International Monetary Fund (IMF) and by the UN Security Council. These recommendations were drafted in 1990 and reviewed in the years 1996, 2001, 2003 and 2012.
The two current EU directives have been implemented in our system by legislative decree 21 November 2007, n. 231, which repealed the provisions implementing the previous EU directives[3] and the fourth directive is being drafted[4], which was proposed by the European Commission in 2013 and amended by the European Parliament in 2014.
The regulatory sources of sub-primary rank are the provisions of the Bank of Italy
[5] and of the other Supervisory Authorities, such as IVASS and Consob, as well as by the circulars issued by the Ministry of Justice and the Ministry of Economy and Finance[6], and are aimed at disseminating to the operators

[3] L. 5 luglio 1991, n. 197 e d.lgs. 20 febbraio 2004, n. 56.
[4] COM(2013) 45 final.
[5] Si vedano, a titolo meramente esemplificativo, il Provvedimento della Banca d'Italia del 10 marzo 2011 (recante disposizioni attuative in materia di organizzazione, procedure e controlli interni volti a prevenire l'utilizzo degli intermediari e degli altri soggetti che svolgono l'attività finanziaria a fini di riciclaggio e di finanziamento del terrorismo, ai sensi dell'art. 7, co. 2, del d.lgs. n. 231/2007), la Comunicazione della Banca d'Italia del marzo 2012 (relativa alla esternalizzazione degli adempimenti antiriciclaggio: obblighi per gli operatori), il Provvedimento della Banca d'Italia del 30 gennaio 2013 (recante gli indicatori di anomalia per le società di revisione e revisori legali con incarichi di revisione su enti di interesse pubblico), il Provvedimento della Banca d'Italia del 3 aprile 2013 (recante disposizioni attuative per la tenuta dell'archivio unico informatico e per le modalità semplificate di registrazione di cui all'art. 37, commi 7 e 8, del d.lgs. n. 231/2007).
[6] Si vedano, a titolo meramente esemplificativo, la Circolare del Ministero dell'Economia e delle Finanze del 17 dicembre 2008 (avente ad oggetto: Decreto legislativo 21 novembre 2007, n. 231, pubblicato sulla Gazzetta Ufficiale della Repubblica italiana del 14 dicembre 2007 – Supplemento

the indications implementing the national regulatory provisions approved in the field of anti-money laundering and combating terrorism.
For their part, the categories that aggregate the subjects to which the legislation imposes obligations have in turn elaborated illustrative circulars, directives addressed to their own associates and members of the professional orders, both in Europe and in the national sphere.
It must then include an additional source which, especially in recent years, is growing, consisting of the jurisprudence, the Court of Justice of the European Union, the European Court of Human Rights, the national Courts and the authorities that oversee deontology of the professional and entrepreneurial categories involved in the fight against money laundering.
It should be noted, however, that the regulation of anti-money laundering measures is associated with other regulations aimed at pursuing the same goal, namely the rules that establish crimes connected with the illicit circulation of goods, services and capital, the rules aimed at determining the "tracking "Of any financial transaction that may be considered relevant for the same purposes, the rules for internal controls in companies (corporate governance and transparency), and tax-related rules always connected with the movement of capital.
On October 16, 2014, at the Ministry of Economy and Finance, on the initiative of Undersecretary Enrico Zanetti, the second meeting of the technical table was organized to discuss the revision of the sanctioning system regarding anti-money laundering obligations. The intention of the promoters is to reduce the penalties for professionals, distinguishing the penalties to be applied to natural persons

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ordinario, n. 268 – Attuazione della Direttiva 2005/60/CE del Parlamento e del Consiglio, del 26 ottobre 2005, relativa alla prevenzione dell'uso del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo), la Circolare del Ministero dell'Economia e delle Finanze del 12 ottobre 2009 (Circolare sull'operatività connessa con lo "scudo fiscale" di cui all'art. 13-*bis* del d.l. 1° luglio 2009, n. 78, ai fini antiriciclaggio), la Circolare del Ministero dell'Economia e delle Finanze dell'11 ottobre 2010 (Circolare interpretativa per la segnalazione di operazioni sospette ai sensi dell'art. 41, co. 1, del d.lgs. n. 231/2007, come modificato dall'art. 36, co. 1, lett. b), del d.l. 31 maggio 2010, n. 78).

(professionals) and the penalties to be applied to legal persons (credit institutions).
So far two texts have been prepared, one drawn up by the MEF and the other by the UIF, which will undoubtedly be brought together for the next meeting on 5 November 2014.

2. The obligations of professionals

The national legislator - which has implemented the community provisions, widening its applicative scope where necessary - has identified in a punctual and analytical way the subjects that must contribute to preventing the use of the financial and economic system for money laundering or terrorist financing purposes and has provided, in great detail, a series of measures aimed at protecting the correctness of behavior.
The obliged subjects are, substantially, the economic operators that act on the markets and that, therefore, are more exposed to the risk of being exploited by the perpetrators of criminal conduct, ie by those who intend to put into circulation the proceeds of their crimes; the legislative decree n. 231/2007 contains the complete list of these subjects, distinguishing them in four categories: financial intermediaries and other subjects performing financial activities (art. 11)[7]; professionals (Article 12); accounting auditors (Article 13)[8]; other subjects (art. 14)[9].

[7] Art. 11: 1. Ai fini del presente decreto per intermediari finanziari si intendono: a) le banche; b) Poste italiane S.p.A.; c) gli istituti di moneta elettronica; d) le società di intermediazione mobiliare (SIM); e) le società di gestione del risparmio (SGR); f) le società di investimento a capitale variabile (SICAV); g) le imprese di assicurazione che operano in Italia nei rami di cui all'articolo 2, comma 1, del CAP; h) gli agenti di cambio; i) le società che svolgono il servizio di riscossione dei tributi; l) gli intermediari finanziari iscritti nell'elenco speciale previsto dall'articolo 107 del TUB; m) gli intermediari finanziari iscritti nell'elenco generale previsto dall'articolo 106 del TUB; n) le succursali italiane dei soggetti indicati alle lettere precedenti aventi sede in uno Stato estero nonché le succursali italiane delle società di gestione del risparmio armonizzate e delle imprese di investimento; o) Cassa depositi e prestiti S.p.A. 2. Rientrano tra gli intermediari finanziari altresì: a) le società fiduciarie di cui alla legge 23 novembre 1939, n. 1966; b) i soggetti operanti nel settore finanziario iscritti nelle sezioni dell'elenco generale previste dall'articolo 155, comma 4, del TUB; c) i soggetti operanti nel settore finanziario iscritti nelle sezioni dell'elenco generale previste dall'articolo 155, comma 5, del TUB; d) le succursali italiane dei soggetti indicati alle lettere a) e c) aventi sede all'estero. 3. Ai fini del presente decreto, per altri soggetti esercenti attività finanziaria si intendono: a) i promotori finanziari iscritti

nell'albo previsto dall'articolo 31 del TUF; b) gli intermediari assicurativi di cui all'articolo 109, comma 2, lettere a) e b) del CAP che operano nei rami di cui al comma 1, lettera g); c) i mediatori creditizi iscritti nell'albo previsto dall'articolo 16 della legge 7 marzo 1996, n. 108; d) gli agenti in attività finanziaria iscritti nell'elenco previsto dall'articolo 3 del decreto legislativo 25 settembre 1999, n. 374.

[8] Art. 13: 1. Ai fini del presente decreto per revisori contabili si intendono: a) le società di revisione iscritte nell'albo speciale previsto dall'articolo 161 del TUF; b) i soggetti iscritti nel registro dei revisori contabili.

[9] Art. 14: 1. Ai fini del presente decreto per "altri soggetti" si intendono gli operatori che svolgono le attività di seguito elencate, il cui esercizio resta subordinato al possesso delle licenze, autorizzazioni, iscrizioni in albi o registri, ovvero alla preventiva dichiarazione di inizio attività specificatamente richieste dalla norme a fianco di esse riportate: a) recupero di crediti per conto terzi, in presenza della licenza di cui all'articolo 115 del TULPS; b) custodia e trasporto di denaro contante e di titoli o valori a mezzo di guardie particolari giurate, in presenza della licenza di cui all'articolo 134 del TULPS; c) trasporto di denaro contante, titoli o valori senza l'impiego di guardie particolari giurate, in presenza dell'iscrizione nell'albo delle persone fisiche e giuridiche che esercitano l'autotrasporto di cose per conto di terzi, di cui alla legge 6 giugno 1974, n. 298; d) gestione di case da gioco, in presenza delle autorizzazioni concesse dalle leggi in vigore, nonché al requisito di cui all'articolo 5, comma 3, del decreto-legge 30 dicembre 1997, n. 457, convertito, con modificazioni, dalla legge 27 febbraio 1998, n. 30; e) offerta, attraverso la rete internet e altre reti telematiche o di telecomunicazione, di giochi, scommesse o concorsi pronostici con vincite in denaro, in presenza delle autorizzazioni concesse dal Ministero dell'economia e delle finanze - Amministrazione autonoma dei monopoli di Stato, ai sensi dell'articolo 1, comma 539, della legge 23 dicembre 2005, n. 266; f) agenzia di affari in mediazione immobiliare, in presenza dell'iscrizione nell'apposita sezione del ruolo istituito presso la camera di commercio, industria, artigianato e agricoltura, ai sensi della legge 3 febbraio 1989, n. 39.

Peraltro, il d.lgs. n. 231/2007 si applica anche ai seguenti altri soggetti, ad eccezione delle disposizioni relative agli obblighi di identificazione e di registrazione: a) alle società di gestione accentrata di strumenti finanziari; b) alle società di gestione dei mercati regolamentati di strumenti finanziari e ai soggetti che gestiscono strutture per la negoziazione di strumenti finanziari e di fondi interbancari; c) alle società di gestione dei servizi di liquidazione delle operazioni su strumenti finanziari; d) alle società di gestione dei sistemi di compensazione e

garanzia delle operazioni in strumenti finanziari; e) alle seguenti attività, il cui esercizio resta subordinato al possesso di licenze, da autorizzazioni, iscrizioni in albi o registri, ovvero alla preventiva dichiarazione di inizio di attività specificamente richieste dalle norme a fianco di esse riportate: 1) commercio, comprese l'esportazione e l'importazione, di oro per finalità industriali o di investimento, per il quale è prevista la dichiarazione di cui all'articolo 1 della legge 17 gennaio 2000, n. 7; 2) fabbricazione, mediazione e commercio, comprese l'esportazione e l'importazione di oggetti preziosi, per il quale è prevista la licenza di cui all'articolo 127 del TULPS; 3) fabbricazione di oggetti preziosi da parte di imprese artigiane, all'iscrizione nel registro degli assegnatari dei marchi di identificazione tenuto dalle camere di commercio, industria, artigianato e agricoltura; 4) commercio di cose antiche di cui alla dichiarazione preventiva prevista dall'articolo 126 del TULPS; 5) esercizio di case d'asta o galleria d'arte per il quale è prevista la licenza prevista

Among them, the professionals here note that, due to the nature of their activity and the functions they are called upon to perform, they are particularly sensitive to the risk of money laundering or terrorist financing and that by art. 12 of the internal regulations are defined as:
a) persons registered in the register of accountants and commercial experts, in the register of chartered accountants and in the register of labor consultants;
b) any other person who renders the services provided by experts, consultants and other subjects who perform professional activities in the field of accounting and taxes;
c) notaries and lawyers when, in the name or on behalf of their clients, they carry out any transaction of a financial or real estate nature and when they assist their clients in preparing or carrying out transactions concerning:
1) the transfer for any reason of real rights on immovable property or economic activities;
2) the management of money, financial instruments or other assets;
3) opening or managing bank accounts, deposit books and securities accounts;
4) the organization of the contributions necessary for the constitution, management or administration of companies;
5) the establishment, management or administration of companies, institutions, trusts or similar legal entities;
d) service providers relating to companies and trusts with the exclusion of the parties indicated in letters a), b) and c).
Well, these professionals must comply with the provisions of the anti-money laundering legislation, as well as the obligations indicated by it - which will be described below - in order to avoid facilitating the circulation on the market with their own professional contribution and their specific technical competence. markets of money from criminal activities, giving it a formal appearance that, apparently, frees it and removes it from the illicit source.
Among the obligations that weigh on professionals, it is worth mentioning three in particular, which are the most relevant for the pursuit of the objectives imposed by the legislator: the obligation to verify customers, the obligation

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dall'articolo 115 del TULPS; f) alle succursali italiane dei soggetti indicati nelle lettere precedenti aventi sede legale in uno stato estero; g) agli uffici della pubblica amministrazione (art. 10, co. 2, d.lgs. n. 231/2007).

to register customers and, finally, the obligation to reporting of suspicious transactions to the UIF, the Financial Information Unit, or rather the national structure charged with requesting or receiving from the obliged subjects, analyzing and communicating to the competent authorities information relating to money laundering or terrorist financing.

2.1. Duty of adequate verification

The professional who carries out his activity in an individual, associated or corporate form, must fulfill the obligation to verify the customer that he receives for the first time, in all the cases in which:
a) the professional service has as its object payment means, goods or utilities with a value equal to or greater than 15,000 euros;
b) occasional professional services are performed that involve the transmission or handling of payment means of an amount equal to or greater than 15,000 euros, regardless of whether they are carried out with a single transaction or with several transactions that appear to be connected or split;
c) the transaction is of undetermined or non-determinable value. The establishment, management or administration of companies, entities, trusts or similar legal entities integrates in any case an operation of an indeterminable value;
d) there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or applicable threshold;
e) there are doubts about the truthfulness or adequacy of the data previously obtained for the identification of a customer[10].
Verifying the customer means that the professional must substantially provide, according to the methods indicated by Article 19 of Legislative Decree no. 231/2007[11], to (a)

[10] Art. 16, co. 1, d.lgs. n. 231/2007.
[11] 1. L'adempimento degli obblighi di adeguata verifica della clientela, di cui all'articolo 18, avviene sulla base delle modalità di seguito descritte: a) l'identificazione e la verifica dell'identità del cliente e del titolare effettivo è svolta, in presenza del cliente, anche attraverso propri dipendenti o collaboratori, mediante un documento d'identità non scaduto, tra quelli di cui all'allegato tecnico, prima dell'instaurazione del rapporto continuativo o al

identify the customer and verify their identity on the basis of documents, data or information obtained from a reliable and independent source; (b) identify the actual beneficial owner and verify his identity; (c) obtain information on the purpose and intended nature of the ongoing relationship or professional service; (d) carry out constant monitoring during the ongoing relationship or professional service[12].
Therefore, the identification must concern the natural person who gives the mandate to the professional and, in the event that the client is a legal person, the natural person who represents and / or acts in the name and on behalf of the legal person. For the purpose of identifying the effective holder of a relationship, it is possible for the professional to acquire the information that can be obtained from the public registers, or to ask customers to provide all the necessary information.
There are simplified or reinforced customer verification obligations, depending on the degree of risk that this presents[13].
Indeed, the professional must follow the CD. risk-based approach to assess the actual exposure of a customer or of an economic and / or commercial operation to the risk of money laundering or terrorist financing and it must, therefore, adhere to a series of general criteria indicated by

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momento in cui è conferito l'incarico di svolgere una prestazione professionale o dell'esecuzione dell'operazione. Qualora il cliente sia una società o un ente è verificata l'effettiva esistenza del potere di rappresentanza e sono acquisite le informazioni necessarie per individuare e verificare l'identità dei relativi rappresentanti delegati alla firma per l'operazione da svolgere; b) l'identificazione e la verifica dell'identità del titolare effettivo è effettuata contestualmente all'identificazione del cliente e impone, per le persone giuridiche, i trust e soggetti giuridici analoghi, l'adozione di misure adeguate e commisurate alla situazione di rischio per comprendere la struttura di proprietà e di controllo del cliente. Per identificare e verificare l'identità del titolare effettivo i soggetti destinatari di tale obbligo possono decidere di fare ricorso a pubblici registri, elenchi, atti o documenti conoscibili da chiunque contenenti informazioni sui titolari effettivi, chiedere ai propri clienti i dati pertinenti ovvero ottenere le informazioni in altro modo; c) il controllo costante nel corso del rapporto continuativo o della prestazione professionale si attua analizzando le transazioni concluse durante tutta la durata di tale rapporto in modo da verificare che tali transazioni siano compatibili con la conoscenza che l'ente o la persona tenuta all'identificazione hanno del proprio cliente, delle sue attività commerciali e del suo profilo di rischio, avendo riguardo, se necessario, all'origine dei fondi e tenendo aggiornati i documenti, i dati o le informazioni detenute (art. 19, d.lgs. n. 231/2007).

[12] Art. 18, d.lgs. n. 231/2007.

[13] Artt. 25 e 28, d.lgs. n. 231/2007.

the law, which serve to provide the right level of risk for the case[14]:
a) with reference to the customer: 1) legal nature; 2) prevailing activity carried out; 3) behavior held at the time of the completion of the transaction or the establishment of the ongoing relationship or professional service; 4) geographical area of residence or headquarters of the customer or counterparty;
b) with reference to the transaction, ongoing relationship or professional service: 1) type of transaction, ongoing relationship or professional service in place; 2) methods of carrying out the transaction, ongoing relationship or professional service; 3) amount; 4) frequency of operations and duration of the ongoing relationship or professional service; 5) reasonableness of the transaction, ongoing relationship or professional service in relation to the activity carried out by the customer; 6) geographical area of destination of the product, object of the operation or ongoing relationship[15].
The verification must continue for the entire duration of the professional relationship, in the sense that the professional must continuously monitor the behavior of the client and the type of activity from this turning point and the services provided by it, in order to interrupt the relationship, return to the customer any sums received, and possibly promote reporting to the competent authorities, if it were to ascertain the typical anomalies of terrorism or money laundering activities.
Evidently, professionals who are unable to fulfill the customer's verification obligation are obliged to abstain, in the sense that they cannot establish the ongoing relationship with the client, or perform operations or professional services and, in the event that have already started the ongoing relationship or professional service, they must conclude it, evaluating, in all cases, the opportunity to report to the UIF[16].

[14] Al riguardo, il FATF (Financial Action Task Force) ha emanato, nel 2008, un Rapporto sul *risk based approach* nelle professioni legali.
[15] Art. 20, d.lgs. n. 231/2007.
[16] Art. 23, d.lgs. n. 231/2007.

2.2. Registration obligation

Once the customer has been verified, the professional must proceed with his registration, within a short period of time not exceeding thirty days from the completion of the transaction or from the opening, variation or closure of the ongoing relationship or from the end of the professional service and, in particular, it must provide for the preservation of the documents and information that it has collected to verify the customer, for a period of ten years from the execution of the operation or from the termination of the ongoing relationship or professional service [17].

The obligation to register can be fulfilled by resorting to an electronic archive, or to a paper register of customers, which contains all the identification data of the customer [18].

2.3. Reporting obligation

Finally, it notes the obligation to report suspicious transactions to the FIU, without delay, when the professional knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing operations have been carried out or attempted. .

The suspicion must derive from the characteristics, extent and nature of the transaction, or from any other circumstance known based on the functions performed, also considering the economic capacity and the activity carried out by the customer.

To help the professional in this "investigative" activity, the anomaly indicators of the operations are periodically published - for lawyers by decree of the Minister of Justice [19].

The professional can send the report directly to the UIF, or to the professional order to which he belongs and, in the latter case, the UIF is informed directly by the order [20].

This obligation clearly affects the relationship of trust established between the client and the professional, undermining certain fundamental principles of our system, such as that of professional secrecy, which, in the case of

[17] Art. 36, d.lgs. n. 231/2007.
[18] Art. 38, d.lgs. n. 231/2007.
[19] Art. 41, d.lgs. n. 231/2007.
[20] Art. 43, d.lgs. n. 231/2007.

the legal profession, are placed in defense of the citizen's rights which calls for defense and legal assistance.
For this reason, the legislator has expressly excluded that the reporting obligation constitutes a violation of professional secrecy[21] and that the obligations provided by the anti-money laundering regulation weigh on the lawyers in the earlier defense phase and in the prior phase of counseling on the rights, obviously remaining applicable the discipline relative to the repression of the crimes if the lawyer participates, even only with his advice, to the commission offense.

3. Exemption of the liability of the lawyer

However, it is appropriate to highlight two cases in which the scope of application is limited to lawyers in the anti-money laundering discipline:
a) when the performance of the professional activity does not consist of participation in the name or on behalf of the client in a financial or real estate transaction, or in assisting clients in preparing or carrying out transactions concerning (1) the transfer for any reason of real rights on immovable property or economic activities (2) the management of money, financial instruments or other assets (3) the opening or management of bank accounts, deposit books and securities accounts (4) the organization of the necessary contributions the establishment, management or administration of companies (5) the establishment, management or administration of companies, entities, trusts or similar legal entities [22]; in this case, the lawyer is exempt from the fulfillment of all the obligations provided by the anti-money laundering legislation.
Well, the interpretation of this provision in the sense most favorable to the lawyer implies that the latter is exempt from the obligations of verification, registration and reporting every time he carries out the judicial activity, that is the advice of a strictly legal nature.
Indeed, forensic activity does not in itself consist in the construction of an economic, commercial or real estate operation, but in providing, in court or out of court, the legal

[21] Art. 41, co. 6, d.lgs. n. 231/2007.
[22] Art. 12, co. 1, del d.lgs. n. 231/2007.

support to the client's economic, commercial or real estate operation.
Therefore, it is clear that the judicial activity carried out by the lawyer is excluded from the regulatory provision, but also the non-commercial out-of-court activity.
b) When lawyers receive information about the client during the examination of his legal position or the performance of defense duties or representation of the client in a judicial proceeding, or in relation to such proceedings, including advice on the eventuality of to initiate or avoid proceedings where such information is received or obtained before, during or after the proceedings[23]; in this case, there is no obligation for the lawyer to report, but only the verification and registration obligations.
In this regard, it should be noted that, with regard to the information and / or news that the lawyer learns about the client during the execution of the judicial activity, and of the activities prodromal to it, such as the functional consultancy for assistance in a judicial proceeding, or in an arbitration proceeding, or in a conciliation / mediation procedure, there is no doubt that the reporting obligation does not exist.
A more uncertain solution is the case of out-of-court legal advice, which has no form of connection with a possible judgment in which the customer is involved.
On this point there are three judicial rulings, one of the Conseil d'Etat of 10 April 2008, one of the Belgian Cour of arbitration, of 23 January 2008, n. 10, and one of the Court of Justice of the European Union, of 26 June 2007, case C-305/05), which clarify that legal advice is a specific and confidential activity of the lawyer and, therefore, does not fall within the anti-money laundering legislation, except that it concerns not only the strictly legal aspects of the transaction carried out by the client, but also the economic, financial and commercial profiles.
In this latter case, in fact, the lawyer carries out a strictly negotiating activity which, as such, is identified with that carried out by the client and is therefore subject to the complaints and sanctions prescribed by the anti-money laundering regulations.

[23] Art. 12, co. 2, del d.lgs. n. 231/2007.

4. Regulatory actions in progress

The proposal for a fourth directive[24] which, once approved, will repeal the previous directives, present significant changes with respect to the previous EU legislation: with regard to the obliged subjects, it extends its scope of application to rental agents[25] and to natural or legal persons who trade goods, when the payment is made or received in cash for an amount equal to or greater than 7,500 euros, regardless of whether the transaction is executed in a single solution or with different operations that appear to be connected[26], and allows the Member States to be able to exclude from its field of application natural or legal persons who exercise, occasionally or on a limited scale, a financial activity that presents little risk of money laundering or terrorist financing, but only if they are respected certain criteria[27]; with regard to the obligations of adequate verification, it requires the recipients of the discipline to verify the customer even in the event that the latter carries out occasional operations in cash for an amount equal to or greater than 7,500 euros, regardless of whether the transaction is executed in a single solution or with various operations that appear to be connected, as well as in the event that the customer is a gambling service provider that performs occasional transactions in cash for an amount equal to or greater than 2,000 euros, regardless of the fact that the operation is performed in a single solution or with different operations that appear linked[28].

The proposed directive was amended by the European Parliament, with the legislative resolution of 11 March 2014, in order to make the instruments aimed at preventing the possibility for professionals to facilitate the

[24] Relativa alla prevenzione dell'uso del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo.
[25] Art. 2, co. 1, lett. d), della proposta di direttiva.
[26] Art. 2, co. 1, lett. e), della proposta di direttiva.
[27] Art. 2, co. 2, della proposta di direttiva: (a) l'attività finanziaria è limitata in termini assoluti; (b) l'attività finanziaria è limitata a livello di operazioni; (c) l'attività finanziaria non è l'attività principale; (d) l'attività finanziaria è accessoria e direttamente collegata all'attività principale; (e) l'attività principale non è un'attività menzionata al paragrafo 1, ad eccezione dell'attività di cui al paragrafo 1, punto 3), lettera e); (f) l'attività finanziaria è prestata soltanto ai clienti dell'attività principale e non offerta al pubblico in generale.
[28] Art. 10, della proposta di direttiva.

use of the proceeds of criminal activities even more incisive and effective. .
In particular, the intervention of the European Parliament concerned the most delicate aspects of the anti-money laundering regulation, such as that concerning the obliged subjects, that of the exact identification of the actual owner of an entity, as well as that of the enhancement of the customer's evaluation system based on risk.
With regard to the recipients of the obligations envisaged by the directive, it is worth highlighting amendment no. 48, which extends the scope of application of the regulations to cases in which notaries or legal professionals assist the client in the preparation or implementation of operations regarding the establishment, management and administration of foundations and mutual societies; amendment no. 50, which extends the application of the regulation to natural or legal persons who negotiate goods and services, when payment is made in cash for an amount equal to or greater than 7,500 euros; amendment no. 53, which introduces the definition of a self-regulatory body, as a body to which national law recognizes the prerogative to establish the obligations and rules governing a given profession or a given sector of economic activity and which the natural and legal persons belonging to that profession or sector are required to respect; amendment no. 74, which extends the obligation of adequate verification to all cases in which a company is established; amendment no. 150, which introduces Annex III bis, concerning the minimum obligations to be respected in the event of a customer's enhanced verification.
As regards, instead, the beneficial owner, the most significant change is contained in amendment no. 93, which provides for the obligation to register data and information on the beneficial owner of an entity in the business register and the link between the business registers of the Member States, through the European platform, with the specification, however, that the consultation of these registers does not exonerate the obliged subjects from the duty of adequate verification, which therefore is not satisfied by the simple reading of the public registers.
Again, the European Parliament wanted to emphasize the importance of the method of customer assessment with a

risk-based approach, already used by previous directives and, thus, updated with amendment no. 70 and with the provision of the cc.dd. reference practices for risk management, the list of internal measures that each obliged party must use to carry out customer risk assessment: internal policies, procedures and controls, including adequate customer verification, reporting and document retention, internal control, compliance management and prior investigation of employees.
Last but not least, the particular attention paid by the European Parliament to the protection of personal data of those involved in the anti-money laundering regulation should not be overlooked.
In this sense, amendment no. 3, which stresses the need for the European Union, in implementing the FATF recommendations, to scrupulously observe its legislation on the protection of personal data, as well as the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights. man and fundamental freedoms; amendment no. 16, which provides that the public central registers contain the information of the beneficial owner in an open and secure format, in compliance with the provisions of the European Union on the protection of personal data; amendment no. 69, which requires that the procedures for mitigating and managing the risks of money laundering and financing of terrorism followed by the obliged parties respect the rules on data protection; amendment no. 99, which, with regard to the designation of a self-regulatory body as the authority responsible for receiving reports of suspicious transactions (SOS), hopes that the Member States will provide the means and the way to guarantee the protection of professional secrecy, confidentiality and of privacy; amendment no. 104, which introduces the reference to data protection in the heading of Chapter V of the proposed directive, before "registration obligations and statistical data"; amendment no. 106, which introduces the art. 39 bis, concerning the processing of personal data and the powers of the competent authority for the protection of such data.