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European Union

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the prevention of the use of the financial system for the purpose of
money laundering and terrorist financing
– Draft Statement of the Council's reasons

I. INTRODUCTION

On 7 February 2013, the Commission presented a package composed of two elements:

- a proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD)¹;
- a proposal for a Regulation of the European Parliament and the Council on information accompanying transfers of funds (AMLR)².

The European Parliament adopted its position at first reading at its plenary session on 11 March 2014.

The Working Party on Financial Services examined the proposed Regulation and Directive on twenty-four occasions under various Presidencies.

In December 2014, final compromises with the European Parliament were found both on the Regulation and Directive, which permitted the conclusion of the negotiations concerning the two dossiers. At the 16 December 2014 trilogue, a provisional agreement was reached between the co-legislators with a view to an early second-reading agreement.

On 27 January 2015, the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament approved the outcome of the trilogue negotiations. On 29 January 2015, the Chairs of those Committees addressed a letter to the Presidency indicating that, should the Council transmit formally to the Parliament its position in the form that it was presented in the Annex to that letter, the Chairs would recommend to the Plenary to accept the Council's position without amendment.³

¹ Doc. 6231/13

² Doc. 6230/13

³ Doc. 5748/15 ADD1

On 10 February 2015 the Council reached a political agreement on the revised texts.

Taking into account the above agreement and after legal and linguistic revision, the Council adopted its position at first reading on 20 April 2015, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU).

All three institutions have treated the Anti-Money Laundering Directive and Regulation as an integral package. The same statement of the Council's reasons has therefore been adopted for both.

II. OBJECTIVE

The proposal for an Anti-Money Laundering Directive (AMLD) was adopted by the Commission to update and improve the EU's existing 3rd AMLD with the aim of further strengthening the EU's defences against money laundering and terrorist financing and of ensuring the soundness, integrity and stability of the financial system. The main objectives of the measures proposed are:

- to safeguard the interests of society from criminality and terrorist acts;
- to contribute to financial stability by protecting the soundness, proper functioning and integrity of the financial system.
- to safeguard the economic prosperity of the European Union by ensuring an efficient business environment; and
- to strengthen the Internal Market by reducing complexity across borders;

These objectives will be achieved by:

- ensuring consistency between the EU approach and the international one - in particular, alignment with the most recent (February 2012) Recommendations of the Financial Action Task Force (FATF);
- ensuring consistency between national rules, as well as flexibility in their implementation; and
- ensuring that the rules are risk-focused and adjusted to address new emerging threats.

The purpose of the Anti-Money Laundering Regulation (AMLR), which was adopted at the same time as the AMLD, is to update and revise the existing 3rd AMLR in ways which improve traceability of payments and ensure that the EU framework remains fully compliant with international standards (FATF recommendations).

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

The amendments of the Council aim to strengthen the EU's defences against money laundering and terrorist financing while ensuring consistency with the approach followed at international level, notably the FATF recommendations. On some issues, the new EU rules expand on the FATF's requirements and provide additional safeguards.

For gambling services posing higher risks, the Directive requires service providers to conduct due diligence for transactions of € 2000 or more. With the exception of casinos, Member States will be allowed to exempt gambling services from some or all requirements, in strictly limited and justified circumstances. Such exemptions will be subject to an appropriate risk assessment.

Furthermore, in certain proven low-risk circumstances and under strict mitigating conditions, Member States are allowed to exempt electronic money products from certain customer due diligence measures.

The Directive applies a risk-based approach to better target risks. The importance of a supra-national approach to risk assessment has been recognised at international level. As the Commission is well placed to review specific cross-border threats, it has been entrusted with the responsibility of coordinating the assessment of money laundering and terrorist financing risks affecting the internal market and relating to cross-border activities.

With regard to the treatment of politically exposed persons, the Directive does not distinguish between persons who hold or have held prominent functions domestically and those who hold or have held such functions abroad.

As a result of the Directive, beneficial ownership information on corporate and other legal entities will have to be held in a central register in each Member State. Member States that so wish may use a public register. Beneficial ownership information will be accessible to competent authorities and financial intelligence units and, in the framework of the conduct of customer due diligence, to obliged entities. The Directive also enables persons or organisations that can demonstrate a legitimate interest to access at least the following information on the beneficial owner: its name, month and year of birth, nationality and country of residence, as well as the nature and extent of the beneficial interest held. As for trusts, central registration of beneficial ownership information will be used when the trust generates tax consequences.

As concerns sanctions, the text provides for maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach, where that benefit can be determined, or at least €1 million. For breaches involving credit or financial institutions, it provides for:

- a maximum pecuniary sanction of at least €5 million or 10% of the total annual turnover in the case of a legal person;
- a maximum pecuniary sanction of at least €5 million in the case of a natural person.

The provisions relating to sanctions of the Regulation have been aligned to those of the Directive.

In order to protect the proper functioning of the EU financial system and of the internal market from money laundering and terrorist financing, the Commission will identify, by means of delegated acts, third country jurisdictions which have strategic deficiencies in their national regimes in the field of anti-money laundering and countering the financing of terrorism.

The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing. This includes the requirement to include information on the payee with a transfer of funds. Under the Regulation, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority shall issue guidelines addressed to competent authorities and the payment service providers on measures to be taken in accordance with this Regulation, especially as regards transfer of funds with missing or incomplete information on the payer or the payee.

Additionally, amendments have been made to both the Directive and the Regulation to ensure that alignment with the FATF Recommendations is carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights.

The European Parliament could accept these changes.

IV. CONCLUSION

The Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, with the support of the Commission.

This compromise was confirmed by a letter from the Chairs of the European Parliament ECON and LIBE Committees addressed to the Presidency and dated 29 January 2015. It was subsequently endorsed by the General Affairs Council on 10 February 2015 through the adoption of the political agreement.

The Council believes that its position at first reading represents a balanced package and that, once adopted, the new Directive and Regulation will make a significant contribution to the fight against money laundering and terrorist financing in the Union.