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- EP discussion paper on Politically Exposed Persons

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Politically Exposed Persons

Lines 171a, 167, 182, 502, 503, 506, 519, 520

1. Context

Co-legislators largely agree on the regime applicable to politically exposed persons (PEPs). Differences remain, however, in the following fundamental points:

- the definition of PEPs, where Parliament wishes to introduce a new category of PEPs (heads of regional and local authorities including groupings of municipalities and metropolitan regions of at least 30.000 inhabitants), and the Presidency expressed willingness to delimit the scope of heads of political parties to those with national or regional parliamentary seats;
- the definition of family members, where the Parliament wishes to introduce siblings;
- the deadline given to AMLA to issue guidelines in Article 32(3);
- the obligation to have senior management approval for occasional transactions carried out by PEPs;
- the minimum amount of time that certain EDD measures should be applicable to former PEPs, from 12 months (Council) to 24 months (Parliament);
- whether the obligation to carry out certain EDD measures to former PEPs should to both occasional transactions and business relationships.

2. Previous discussions

In previous discussions, at political level, the Council criticised Parliament's proposal to extend the scope of PEPs. The Council is concerned about the practicability of the expansion since, in their view, scope in mayors of thousands of small towns and all siblings of PEPs, which will produce tremendous administrative burden both for obliged entities and customers. The Commission did not express a fixed position on the issue during the political trilogue. Other points were discussed at technical level without a concrete outcome or agreement.

The Commission later submitted to co-legislators a paper on the state of play as regards Member States' identification of prominent public functions at local and regional level. The paper, which transmits information supplied by Member States AMLD5, concludes that 17 Member States have included officials from regional and local authorities in the scope of PEPs at national level, whereas 10 Member States have chosen not to include regional and local authorities' posts in the

list of prominent public functions, with two specific cases. As a result, a minority of Member States did not categorise heads of regional and local authorities in their list of prominent public functions, which attests that, in the understanding of most Member States, the proposal of the Parliament is adequate.

With regards to the Parliament's inclusion of "siblings" in the definitions of "family members", it is worth noting that, in its guidance on PEPs¹, FATF affirms that, "*for family members, this includes such relevant factors as the influence that particular types of family members generally have, and how broad the circle of close family members and dependents tends to be. For example, in some cultures, the number of family members who are considered to be close or who have influence may be quite small (e.g., **parents, siblings, spouses/partners, and children**). In other cultures, grandparents and grandchildren might also be included, while in others, the circle of family members may be broader, and extend to cousins or even clans.*"

The Parliament therefore concluded that siblings form part of the minimum standard provided by the FATF Guidance on PEPs, and should therefore be included in the single rulebook. Although the current approach of Member States is quite inconsistent, already at least five Member States do include siblings in their national law.² In several mutual evaluation reports, FATF and MONEYVAL have pointed out that some Member States' definition of "family members" that does not include siblings is more restrictive than is called for by the FATF Guidance on PEPs³.

3. Possible compromise

A possibility of a "package" compromise proposal that would include the following:

- a) the addition of heads of regional and local authorities from the Parliament mandate would be kept and the Parliament would accept the delimitation of the members of the governing bodies of political parties covered by the provision to those with representation in national or regional parliaments;
- b) siblings would be added in the definition of "family members";
- c) Parliament would revert to the Commission proposal on the deadline to issue guidelines in Article 32(3);
- d) Parliament would accept the Council proposal to have senior management approval for occasional transactions carried out by PEPs;
- e) Parliament would accept reverting back to the Commission proposal on the minimum amount of time that certain EDD measures should be applicable to former PEPs (12 months);
- f) Parliament would accept the Council proposal to extend the obligation to carry out certain EDD measures to former PEPs to both occasional transactions and business relationships within the deadline applicable in e).

¹ FATF Guidance on Politically Exposed Persons, page 12. <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-PEP-Rec12-22.pdf.coredownload.pdf>

² Czech Republic, Latvia, Lithuania, Luxembourg, Portugal

³ See Annex I

ANNEX I

[Belgium, Mutual Evaluation Report](#)

5.26. Belgium is partially compliant with R 12 – Several deficiencies are observed: [...] Moreover, Belgian law provides a restrictive list of persons who are to be considered direct family members or close associates of PEPs⁴, which is too restrictive compared with the open approach of R 12.

[Estonia, Mutual Evaluation Report](#)

264. Criterion 12.3 – FIs are required to apply the measures under c. 12.1 and 12.2 in relation to family members and close associates of PEPs (MLTFPA, §41(1)). MLTFPA defines the categories of persons that are considered family members of a PEP and close associates (MLTFPA, §91 (8)(9)). However, siblings are not covered as family members of a PEP.

266. Only minor shortcomings have been identified. Siblings are not covered as family members of a PEP.

[France, Mutual Evaluation Report](#)

Criterion 12.3 – The notion of PEPs (cf. criterion 12.1) includes direct family members or known close associates (CMF, Art. L561-10, 1). These concepts are set out in an exhaustive list (CMF, Art. R561-18II and III), which imposes a limited approach that does not cover all individual situations presenting specific risks due to their links with a PEP, e.g. brothers, sisters, cousins, uncles, aunts or persons closely associated with them other than through legal or business ties. Weighing and conclusion: considering the importance of the threat of ML of the proceeds of corruption, both domestically and internationally (see Chapter 1), to which France is exposed, the shortcomings relating to the exhaustive nature of the definition of PEPs and their family members, in addition to the lifting of the status of the PEP one year after leaving office, are considered to have a major impact on the rating.

[Germany, Mutual Evaluation Report](#)

Criterion 12.3 – The measures set out in c.12.1 apply to the family members and close associates of all types of PEPs (GwG, ss.15(3), 15(4)). The definition of family member is “close relative” of a PEP, such as a spouse, child or parent. While this list is not exhaustive, it is not clear that the definition would include extended family members (e.g., aunts and uncles, brothers- and sisters-in-law, grandparents, etc.).

Weighing and conclusion: Germany covers domestic and foreign PEPs in its laws; however, some minor gaps exist: the requirement to establish the source of wealth is not always covered; the definition of family members and close associates does not clearly extended family or close social associates;

[Romania, Mutual Evaluation Report](#)

Criterion 12.3 – PEP requirements apply also to family members of PEPs and persons publicly known as close associates of PEPs (having close business relations with PEPs) (AML/CFT Law, Art. 17(10)). Family member is defined as being the spouse (or person considered to be equivalent), parent, children, and their spouses (or person considered to be equivalent (AML/CFT Law, Art.3(4)) and this does not include siblings and stepchildren. [...]

⁴ 29° “family member”: a) the spouse or a person considered to be equivalent to a spouse; b) the children and their spouses, or persons considered to be equivalent to a spouse; c) the parents;

Weighting and conclusion: [...] Definitions for close associate and family member of PEPs are considered to be too narrow. [...]

[Slovak Republic, Fifth Round Mutual Evaluation Report](#)

Criterion 12.3 – The definition of family members of PEPs is provided by the Art. 6 (3) of the AML/CFT Act and includes spouses, parents, children and their spouses and those equivalent to spouses. The definition of family members however does not include siblings of PEPs, which is part of the minimum standard provided by the FATF Guidance on PEPs.

Weighting and Conclusion: [...] Definitions of family members and close associates of PEPs are restrictive, while none of the elements of c.12.4 are met.