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From:	Presidency
To:	Financial Services Attachés Working Party on Financial Services and the Banking Union (AML)

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Subject:	AMLR: VTC working party 20.10.23 - EP discussion paper on High Risk High Net Worth Individuals
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High Risk High Net Worth Individuals

Lines 70a, 184a, 522a, to be reflected on 259c, 460

1. Context

In its negotiating position, the Parliament introduced a regime in the Anti-Money Laundering Regulation targeting high-risk high net worth individuals. Business relationships and transactions involving high net worth individuals who present one or several factors of higher risk may seriously compromise the integrity of the Union's financial system and cause serious vulnerabilities to the internal market. The recent revelations on the Luanda Leaks, Pandora Papers and Swiss Secrets¹ have shown that financial institutions and intermediaries have been found to side-line CDD obligations towards high-net worth customers, even when the source of funds and wealth of customers should have raised many red flags. The Parliament finds this unacceptable, especially when customers deemed high risk, but with lower net wealth, are being subject to de-risking and denied basic financial services.

On the other hand, while AML rules have demanded from average low risk customers ever increasing reporting of information on their financial affairs, citizens have perceived with outrage that so much questionable funds flow freely through the EU's financial system on behalf of third country oligarchs from highly corrupt countries, seemingly without appropriate supervisory control.

Parliament proposed, therefore, mandatory enhanced customer due diligence measures in addition to other measures with respect to high-risk high net worth customers, similarly to what currently is foreseen for Politically Exposed Persons. For the purpose of this regime, high risk is deemed on the basis on the source of funds or wealth that derive prominently from the extractive industry, or from links with politically exposed persons or from the exploitation of monopolies in third countries identified by credible sources or through acknowledged processes as having significant levels of corruption or other criminal activity. Parliament believes that these provisions

¹ "Due diligence of customers and accounts — say at a level of \$1 million — are very thorough," said a former senior executive. "But when it comes to high net-worth accounts, bosses encourage everyone to look the other way and managers get intimidated about their bonuses and job security."; In addition, very big accounts are kept so secret that only a few senior executives might know who owns them. "When someone wants to engage in money laundering after he loots assets of the country, for example, he needs to transfer the money. So holders of big accounts go directly to the very senior managers," he said. <https://www.occrp.org/en/suisse-secrets/historic-leak-of-swiss-banking-records-reveals-unsavory-clients>

would help reduce incentives for higher risk appetite on the part of obliged entities and enhance supervisory scrutiny over this category of customers.

2. Technical discussions

In technical discussions, the Council rejected Parliament's proposal. Member States argue that it is too difficult to identify high risk high net worth customers, applying a rule-based assessment that bears little relation to risk. Council is also concerned that the regime would require obliged entities to gather information about the economic profile of beneficial owners, which enlarges of the scope of customer due diligence. It would be hard to obliged entities to ascertain whether the criteria to identify a high-risk high net worth individual is fulfilled, given its imprecision. According to the Council, even if the rationale and criteria put forth by Parliament is understandable, it is politically driven, but very difficult to put into practice.

The Commission also expressed serious reservations about the proposal, for similar reasons. The application of the criteria regarding how wealth was accumulated could lead to unfair or disproportionate outcomes and that the choice to scope in legal persons would raise the issue of how the threshold is calculated in relation to beneficial owners. Furthermore, it is not proportionate to apply this measure to all obliged entities. A more proportionate approach should focus on private banking and fund management.

3. Compromise proposal

Taking into account the remarks made by the Commission and the Council, a possibility for compromise would try to achieve a more targeted and proportionate outcome, encompassing the following elements:

- Reduction of the scope of persons deemed relevant for the provision. The specific provisions would only be applicable to customers with a net wealth estimated at 30 million EUR², or more. The high-risk elements in the Parliament proposal would be kept, i.e. one would only have to apply enhanced due diligence measures to those of high risk. The Parliament is willing to discuss the feasibility of the proposed criteria and what triggers could be introduced in order to avoid a screening of the source of wealth of all beneficial owners of all legal entities.
- Reduction of the scope of obliged entities bound to comply with this specific mandatory enhanced due diligence regime: only obliged entities in the financial sector (notably private banking and fund managers) would be bound by the specific provisions, as well as those in the non-financial sector offering services related to the creation, operation or management of companies or other legal entities or arrangements, if they become aware, in the context of CDD obligations, that the customer fulfils the criteria.

These proposals envisage further discussion between co-legislators on the proposal in order to foster a compromise acceptable to all.

² While there is no formal definition or commonly accepted standard, some actors in the financial sector deemed persons with combined assets above \$30 million as "Ultra-high net worth". While this amount can be considered as a reference, the exact amount to indicate ultra high net worth can differ depending on who defines it, the region the person lives in, and when the term is used.

