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From: General Secretariat of the Council
To: Financial Services Attachés
Working Party on Financial Services and the Banking Union (AML)

Subject: AML: Commission services non-paper on Politically exposed persons (PEPs)

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Politically exposed persons (PEPs)

The scope of the definition of politically exposed persons (PEPs) was discussed at the third political trilogue on the Anti-Money Laundering (AML) Regulation on 23 October 2023. The Parliament presented its compromise proposal on extending the definition of PEPs to include heads of regional and local authorities (including groupings of municipalities and metropolitan regions of at least 30 000 inhabitants), along with its acceptance of the Council proposal to limit heads of political parties to those with representation in national or regional parliaments. In addition, the Parliament retained its proposal that siblings would be added to the definition of family members of PEPs.

The Council indicated that it was prepared to accept the inclusion of the heads of local and regional authorities if the threshold was increased to 50 000 inhabitants, with the possibility for Member States to reduce the threshold. Moreover, Member States should retain the possibility to add further categories to cater for national specificities. However, the Council was not willing to accept the inclusion of siblings due to the administrative burden it would impose on both obliged entities and customers, pointing out that FATF guidance on this aspect is not binding so there is no obligation to add siblings to the definition of family members of PEPs.

As no agreement on the amendment of the scope of PEPs was reached by the co-legislators, they tasked the Commission to examine the implications of, and means to, extend the scope of PEPs to include the heads of local and regional authorities, and include siblings in the scope of family members of a PEP.

Local and regional authorities

The inclusion of the heads of local or regional authorities in the scope of the definition of a PEP reflects the risk-based approach followed in the AML framework, given the vulnerability to corruption that holders of such posts have.¹ While corruption activities are constantly evolving and adapting to new opportunities, with differing patterns across Member States, the European Commission and High Representative of the Union for Foreign Affairs and Security Policy have identified in their **Joint Communication on the fight against corruption**² common high-risk areas which deserve particular attention. These involve the management of significant public funds or access to permits or to a critical service. Sectors such as construction, urban planning and healthcare are identified as vulnerable, while sudden increases in public investment can create new corruption-related risks. The activities

¹ A previous non-paper produced by the Commission on Member States' identification of prominent public functions at local and regional level found that the majority already included officials from regional and local authorities in the scope of PEPs at national level.

² [Joint Communication on the fight against Corruption \(europa.eu\)](https://ec.europa.eu/anti-corruption/docs/joint-communication-on-the-fight-against-corruption_en).

undertaken by the heads of local and regional authorities, while differing across the Union, are likely to encompass many of these sectors and involve the management of public funds, therefore their inclusion in the category of PEPs could contribute to the prevention of corruption. The vulnerability of these posts to corruption is demonstrated by a number of scandals in different Member States, while the Council of Europe has stated that: “In its many forms, corruption is a major threat to local and regional governance and to democracy in Europe, that public authorities need to address as a matter of urgency.”³ In its proposal for a Directive on combating corruption the Commission has included in the definition of “high level officials” heads and members of regional government.⁴

With regard to the threshold for the designation of these posts, the Council's proposed threshold of 50 000 inhabitants is in line with the standard adopted by Eurostat for the definition of cities in its typology of the degree of urbanisation.⁵ In this classification, cities (termed as ‘densely populated areas’) are defined as areas with the majority of the population living in an urban centre of more than 50 000 inhabitants. A threshold of 50 000 would capture those local authorities with larger budgets and therefore a higher exposure to corruption, and exclude smaller urban centres below that category, making this more suitable for a risk-based approach to the designation of this role.

Moreover, the Council’s proposal that Member States be given the possibility to set the threshold lower based on risk is a helpful one as it recognises the significant variations of territories and levels of governance in the Union.

In summary, the real risk of corruption associated with these posts, as demonstrated by high profile scandals, justifies their inclusion in the scope of the definition of a PEP, with the threshold of 50 000 inhabitants suggested by the Council limiting the inclusion of posts to those with a higher risk exposure. The possibility of allowing Member States to set a lower threshold allows them to appropriately deal with the risk profile for these posts that corresponds to their national conditions.

Drafting suggestions to provide for the designation of heads of local and regional authorities as PEPs

1) Addition of indent relating to local and regional authorities in the PEP definition and empowerment for Member States to set lower thresholds for local and regional authorities

Suggested text for Article 2, first paragraph, point (25)(a)(viia):

(viia) heads of regional and local authorities, including groupings of municipalities and metropolitan regions, with at least 50 000 inhabitants. Where justified by their administrative organisation and risk, Member States may set a lower threshold for the designation of heads of regional and local authorities as prominent public functions. Member States shall notify that lower threshold to the Commission.

³ The Council of Europe Congress of Local and Regional Authorities has adopted a number of initiatives aimed at preventing corruption at local and regional level. See: [https://www.coe.int/it/web/congress/corruption-and-public-ethics/-/asset_publisher/wbr006gT7CLI/content/coop-pcf-links#?%2243621738%22:\[0](https://www.coe.int/it/web/congress/corruption-and-public-ethics/-/asset_publisher/wbr006gT7CLI/content/coop-pcf-links#?%2243621738%22:[0)

⁴ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>.

⁵ See: <https://ec.europa.eu/eurostat/web/degree-of-urbanisation/background>.

2) Accompanying recital

Suggested text for a new Recital 55a, coming immediately after Recital 55 on the risks associated with persons holding prominent public functions and the resulting need to apply enhanced due diligence measures.

(55a) Risks associated with holders of prominent public functions are not limited to the national level but can also exist at regional and/or municipal levels. This is particularly true at the local level for densely populated areas, such as cities, which alongside the regional level often manage significant public funds and access to critical services or permits, with a resulting risk of corruption and associated money laundering. Therefore, it is necessary to include in the category of prominent public functions the heads of regional and local authorities, including groupings of municipalities and metropolitan regions, with at least 50 000 inhabitants. At the same time, it should be acknowledged that the geography and administrative organisation of Member States vary significantly, and in certain Member States it may be appropriate to set a lower threshold to cover the relevant local authorities on the basis of risk. When Member States decide to set lower thresholds, they should communicate those lower thresholds to the Commission.

Siblings

The Parliament's mandate includes siblings in the category of 'family members' of PEPs. The AMLD does not include siblings in the category of family members and nor does the Commission's proposal for the AML Regulation. However, the use of the word 'including' in the AMLD means that the list of family members in the AMLD is not exhaustive and allows Member States to include other relatives in the category of 'family members'. Based on an analysis of the transposition of the AMLD, and a review of criterion 12.3 in the FATF/Moneyval Mutual Evaluation Reports (MER) and Follow Up Reports (FUR), at least six Member States currently specifically include siblings in the definition of family members of PEPs, while a number of others allow for their inclusion by means of an open, non-exhaustive wording.⁶

There is no definition of 'family member' provided in FATF's interpretive note for Recommendation 12 on PEPs or the Glossary. FATF indicates in its Guidance⁷ that: "the Recommendation does not define the scope of the terms family members ... as this depends to some extent on the social-economic and cultural structure of the country of the PEP." At the same time, the guidance includes a specific reference to siblings when referring to cultures where the number of family members who are considered to be close or who have influence is small, noting that this would include 'e.g., parents, siblings, spouses/partners, and children'.

⁶ For specific inclusion of siblings: Czech Republic, Hungary, Latvia, Lithuania, Luxembourg and Portugal. For permissive wording allowing them to be included: Austria, Germany, Greece, Italy and Malta. Ireland allows the Minister of Justice the power to designate additional relatives in the category of 'family members' if justified on a risk-based approach. For Belgium, its MER notes that it is not clear if wider family members are included in the category of 'parent' which can mean family member as well as parent in French.

⁷ FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22), available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html>.

Therefore, according to the FATF Guidance, where a restrictive understanding of the term ‘family member’ is adopted, it includes siblings.

While the FATF guidance is not binding, in the case of PEPs it is the main reference for assessments regarding Recommendation 12 on PEPs. It is difficult to be definitive about their treatment based on analyses by FATF/Moneyval because the MERs and FURs do not clearly address the scope of family members. However, it appears that in the beginning of the fourth mutual evaluation round this matter was not heavily weighted in the assessments, while in recent years, this issue has been mentioned in the reports, and particularly in the mutual evaluations carried out by Moneyval (e.g., Slovakia, MER 2020; Estonia, MER 2022; Romania, MER 2023). This is consistent with the increased attention that the FATF has paid to corruption.

As rules on PEPs will be contained in the AML Regulation, Member States will be subject to a single assessment of compliance with Recommendation 12 under the future framework. It would appear likely that a failure to include siblings will not go unnoticed by FATF or MONEYVAL.