COUNCIL OF THE EUROPEAN UNION

Brussels, 26 May 2014 (OR. en)

10160/14

Interinstitutional Files:
2013/0024 (COD)
2013/0025 (COD)

EF 155
ECOFIN 507
DROIPEN 80
CRIMORG 44
CODEC 1352

NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	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) and Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds (AMLR) - *General approach*

I. INTRODUCTION

1. 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 (AML Directive)[1];

- a proposal for a Regulation of the European Parliament and the Council on information accompanying transfers of funds (AML Regulation)[2].

[1] Doc. 6231/13
[2] Doc. 6230/13

2. In its Conclusions of 22 May 2013, the European Council called for rapid progress and, *inter alia*, stated that the "revision of the third anti-money laundering Directive should be adopted by the end of the year".

3. The European Central Bank delivered its opinion on 17 May 2013. The European Economic and Social Committee delivered its opinion on 23 May 2013. The European Data Protection Supervisor delivered its opinion on 4 July 2013.

4. On 13 February 2013, the joint report by the European Parliament's ECON and LIBE Committees was adopted, and the European Parliament adopted its position at first reading on 11 March 2014.

5. The AML legislative package aims to ensure consistency between the EU approach and the international approach, and in particular to implement into the EU law the most recent (February 2012) Recommendations of the Financial Action Task Force (FATF)[3]. On certain issues, i.e. scope (inclusion of gambling, reducing customer due diligence thresholds for traders in high value good for cash transactions), the proposal for the AML Directive expands the initial FATF requirements and provides additional safeguards.

II. STATE OF PLAY

6. The Working Party has now met 16 times to examine the AML package. Following deliberations in the Working Party of 16 May 2014, and bilateral consultations, the Presidency revised its compromise texts with a view to confirming agreement on a general approach. The revised compromises, as set out in documents 9752/1/14 and 9673/1/14, is now supported by a qualified majority of delegations.

[3] FATF is an international body established by Paris G7 Summit in 1989, and is considered as the world standard in the fight against money laundering and terrorist financing. Its Members are 34 countries (14 of them EU Member States), as well as the European Commission and Gulf Co-Operation Council.

7. Some concerns still persist in relation to storage of beneficial ownership information, as provided for in the AML Directive. Member States' views were divided on how to ensure storage of the beneficial ownership information so that it can be accessed in a timely manner. The Presidency's compromise text provides for Member States' flexibility in selecting and/or establishing appropriate mechanisms which ensure unrestricted access for competent authorities, FIUs and, if allowed by the Member State concerned, for obliged entities, while providing indicative but not exhaustive examples of the form such a mechanism may take.

8. Other issues in the AML Directive, as signalled by some Member States, include in particular:

- possible exemptions for providers of certain gambling services. The compromise text allows the Member States to decide on such exemptions only after an appropriate risk assessment and without the possibility to apply such exemptions to casinos and online gambling. In relation to the possibility of effective risk-mitigation, it is considered that online gambling as a distribution channel entails more risks than gambling in physical premises. All such exemptions granted by the Member States are to be notified to the Commission, who will inform the other Member States accordingly. This approach is widely supported by the Member States;

- level of sanctions. Member States' views were divided on the level of pecuniary sanctions. This is a horizontal issue across a number of files. The Presidency considers that the levels in the compromise text are proportionate to the gravity of breaches and take account of the differences between those responsible for the breaches. The proposed levels are widely supported by Member States;

- exemption for non-reloadable e-money instruments from certain customer due diligence measures. The compromise text states that the Member States may allow such exemptions, following a thorough risk assessment and provided that a number of risk mitigating conditions are met, including that the e-money instrument concerned is not reloadable. This approach has vast support.

9. During Working Party discussions there was an in-depth debate about all these issues, and the Presidency is satisfied that current compromise texts of both acts reflect the best achievable balance.

III. CONCLUSION

10. Against this background the Presidency recommends that the Permanent Representatives Committee:

- agree on the general approach with regard to the proposed Regulation and Directive as set out in documents 9752/1/14 and 9673/1/14;
- invite the incoming Presidency to pursue, as feasible, negotiations with the European Parliament on the basis of that general approach, with a view to reaching an agreement at early second reading.