



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 19 June 2014
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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

= *Statements*

DECLARATION BY ESTONIA

Estonia strongly supports the fight against money laundering and terrorism financing. We stand firmly behind the objectives of the proposal for the directive. At the same time Estonia believes that measures for combating money laundering and terrorism financing should be effective, but also proportionate in respect of administrative burden on legal entities and governments. It is thus important to maintain a certain degree of flexibility in the implementation at national level.

Estonia believes that the current text of article 29 does not provide for sufficient flexibility on obtaining and holding information of beneficial owners. Estonia is of the view that in its contacts with the European Parliament the Presidency should aim for a solution which would allow for Member States to use a risk-based-approach on determining how the beneficial ownership information should be held, in order to avoid disproportionate administrative burden to legal entities and governments.

DECLARATION BY MALTA

Malta has fully supported the objectives of the proposed Directive from the beginning of the negotiations. In relation to gambling services, Malta supported the Commission's original proposal, i.e. to extend the scope of the Directive to all gambling services as defined under 3(10) of the proposed Directive. In this regard, Malta has disagreed with the exemptions introduced in the proposed article 2(1)(a) as it believes that the Union must be able to address, consistently and holistically, all the risks posed by the sector irrespective of the channel used, the type of the operation or who the operator is.

Nonetheless, in the spirit of compromise, Malta accepted to introduce the possibility of non-discriminatory and evidence-based exemptions. It could not agree with the discrimination made against online gambling in previous compromise texts, which implied that the latter is inherently considered to be higher risk.

The most recent compromise text has introduced a further discriminatory factor - that only cross-border online gambling may not be subject to an exemption. This creates a further artificial distinction which is discriminatory and not based on any evidence. There is no evidence that cross-border online gambling is subject to more serious risks in terms of money laundering, than online gambling operated within borders. Furthermore, given the very nature of online gambling, it will be very difficult in practice to distinguish between cross-border and other forms of online gambling. This approach also risks opening the way for money laundering to take place 'within national borders', thus defeating the very objectives of the Directive.

Malta cannot accept the insertion which has come at such a late stage in the process and calls for the deletion of 'cross-border' under the proposed article 2(1)(a).

DECLARATION BY THE UNITED KINGDOM

We are encouraged by the Hellenic Presidency's work on these important files intended to implement at EU level the latest guidance and recommendations of the Financial Action Task Force concerning money laundering and terrorist financing. We also support efforts to reach a compromise within Council that is both effective and workable ahead of further discussions with the European Parliament.

Looking ahead to the trilogue discussions during the Italian Presidency of the Council, which will cover several aspects of these files, we call for a closer examination of three issues in particular to provide for greater legal certainty.

The provisions relating to agents and distributors and whether these constitute establishments for the purposes of the Directive should be reviewed, not least in light of ongoing negotiations on the amending Payment Services Directive. We will wish to consider carefully how requirements relating to "cross-border online gambling" might be interpreted or implemented in a way that is non-discriminatory and compatible with the Single Market, and in a similar manner, we should seek to ensure that exemptions from certain customer due diligence measures for electronic money payment instruments being restricted to usage in one Member State are consistent with the effective operation of the Single Market.

In addition, ongoing discussions within the EU and FATF have demonstrated the need to further consider data protection measures, both their adequacy in connection with these legislative files and how they may affect Member States' ability to tackle money laundering and illicit financing effectively.

DECLARATION BY AUSTRIA

I) On Chapter III BENEFICIAL OWNERSHIP:

Austria is strongly concerned that the current text does not enhance transparency on beneficial ownership necessary to avoid the abuse of corporate vehicles and trusts for the purpose of money laundering and terrorist financing. There is a clear need to establish mandatory central and public beneficial owner registries both for legal persons (Art. 29) and trusts (Art. 30). Unfortunately, the current text is just a mere reflection of the status quo and does not go beyond what is already in place in the EU. Therefore, Austria calls for further improvements of the text within the up-coming negotiations with the European Parliament.

II) On Chapter VI Section 4 SANCTIONS:

The Austrian constitutional law presently does not allow for administrative pecuniary sanctions in the amount provided for in Article 56 para 1 and para 2 AMLD and Article 18 para 2 AMLR. Therefore, we cannot currently commit to the implementation of this provision, as implementation would require an amendment to constitutional law. It is not predictable whether such an amendment to the Constitution will be adopted.
