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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 April 2015

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2015) 188 final

Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning
of the European Union concerning the position of the Council on the
adoption of 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

Delegations will find attached document COM(2015) 188 final.

Encl.: COM(2015) 188 final



Brussels, 27.4.2015
COM(2015) 188 final

2013/0025 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of 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**

(Text with EEA relevance)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

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position of the Council on the adoption of 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

(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 6 February 2013.
(document COM(2013) 45 final – 2013/0025 COD):

Date of the opinion of the European Economic and Social Committee: 23 May 2013.

Date of the position of the European Parliament, first reading: 11 March 2014.

Date of transmission of the amended proposal: N/A.

Date of adoption of the position of the Council: 20 April 2015.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The main objectives of the proposal to revise Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹ are:

- to strengthen the Internal Market by reducing complexity across borders, safeguarding the interests of society from criminality and terrorist acts, contributing to the financial stability by means of protecting the soundness, proper functioning and integrity of the financial system, and safeguarding the economic prosperity of the European Union by means of ensuring an efficient business environment, and
- to be aligned, where appropriate, with the International standards on combating money laundering and the financing of terrorism adopted by the Financial Action Task Force (FATF)² in February 2012.

¹ OJ L 214, 4.8.2006, p. 29

It requires Member States, supervisory authorities and obliged entities to assess risk and take adequate mitigating measures commensurate to such risk.

In parallel, the Commission, after undertaking a review of the EU framework, also proposed a revision of Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds³, taking into account the updated recommendations on wire transfers adopted by the FATF.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council reflects the political agreement reached between the European Parliament and the Council on 16 December 2014 and includes elements proposed by both institutions. The Commission supports this agreement.

The Commission can accept the additional elements introduced in the position of the Council, in particular that:

- all gambling service providers, not only casinos, are required to apply customer due diligence measures for single transactions of EUR 2000 or more. In strictly limited and justified circumstances and on the basis of a proven low risk of money laundering or terrorist financing, Member States will be allowed to provide for some exemptions.
- the provision on the definition of beneficial ownership constitutes a well-balanced result which will allow an overall understanding of what beneficial ownership means;
- considering the need for consistency of the EU framework applicable to cash, the Commission supports that the threshold applying to natural or legal persons trading in goods or services is raised from EUR 7 500 to EUR 10 000;
- the removal of the distinction between “foreign” and “domestic” politically exposed persons (PEPs), resulting in automatic enhanced due diligence measures to be required in the case of any PEP, regardless of where they originate from, represents a fair balance between the Council's concerns, the European Parliament's reservations and existing recommendations by FATF; and
- the role given to the Commission to conduct a supranational risk assessment of the money laundering and terrorist financing risks that could affect the internal market and relating to cross-border phenomena will bring about a coherent approach towards anti-money laundering (AML) and counter terrorist financing (CTF) requirements at European level.

The Commission recognises that the text reflects the political agreement that was reached between the European Parliament and the Council, which represents a delicate but acceptable balance, as part of the overall compromise, as regards:

² FATF is the international body established by the Paris G7 summit in 1989, tasked with developing international standard in the fight against money laundering and terrorist financing.

³ COM(2013) 44 final

- the provisions related to beneficial ownership information: this information will be held in a central register in each Member State, which constitutes an enhancement of transparency which is in line with the broader Commission's policies. However, as regards the specific provisions on the access to this information, the Commission considers that the notion of "legitimate interest" must be construed and understood in the light of the requirements flowing from Articles 7 and 8 of the Charter of Fundamental Rights, in full respect of the rules on protection of personal data and the right to privacy. When transposing the Directive, the Member States will need to pay particular attention to such requirements in order to ensure that the access of third parties pursues an objective of general interest and that the necessity and proportionality which would justify the restriction of protection of personal data and right to privacy are fully established;
- the provisions related to the level of administrative pecuniary sanctions applicable to financial institutions and to non-financial institutions: in the case of financial institutions, as regards legal persons, the level of maximum pecuniary sanctions shall be at least EUR 5 million or 10% of the total annual turnover, and, as regards natural persons, the maximum of pecuniary sanctions is of a least EUR 5 million; in the case of non-financial institutions, the maximum pecuniary sanctions is at least twice the amount of the benefit derived from the breach, or at least EUR 1 million; and
- the use of delegated acts, and not implementing acts, to identify third-country jurisdictions which have strategic deficiencies in their AML/CTF regimes.

4. CONCLUSION

The Commission supports the results of the inter-institutional negotiations and can therefore accept the Council's position at first reading.