



Mailing list Supervision/ Accounting/ Money Laundering

Brussels, 26 June 2014

General approach of the Members States on the proposal for a fourth Anti-Money-Laundering Directive

Dear Madam or Sir,

On 20 June 2014 the Member States have agreed on a so-called "General Approach" on the proposal for a directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. It becomes apparent from the agreement of the Council that the Member States stick closely in numerous passages to the wording of the revised recommendations of the FATF of February 2012, also with a view to creating conformity of future national implementation acts with the recommendations.

In accordance with this intention and in order to allow a broad approach for the fight against money laundering the Member States have not extended the Commission's list of indicators of a potentially low risk in annex 2 of the proposal for a directive – also not by mentioning "long term purpose-orientated savings agreements". However, it can be welcomed that Member States have agreed to authorize competent authorities according to article 8 (2) to exempt obliged entities from the assessment of their risks (for example of a product) "if the specific risks inherent in the sector are clear and understood".

Furthermore, real estate agents (with whom also some Bausparkassen work closely together) shall, independently from their inclusion in a financial transaction during their activity, be considered as obliged entities in compliance with the directive and apply the customer due diligence (CDD) (article 2 (1) (3d)). At least it has been achieved to convince the Member States to delete the letting agents from the scope of the directive.

Concerning the application of the CDD, the council agreement provides now that obliged entities not only apply them accordingly to article 10 (1b) when it comes to occasional transactions of EUR 15.000 but also when an occasional transaction constitutes a transfer of funds according to the regulation 1781/2006 on information on the payer accompanying transfers of funds and exceeds EUR 1.000.

Moreover, Member States request to abandon the differentiation between foreign and domestic politically exposed persons (PEPs) (article 3 (7)) and to oblige all entities to apply in equal manner the enhanced CDD measures to all PEPs (article 18). Furthermore, "persons who are or who have been entrusted with a prominent function by an international organization" shall be excluded from the definition of PEPs. The Member States have not – in difference to the European Parliament – advocated a list of information from official side (for example from the European Commission) which indicates to the obliged entity whether its customer is a PEP. The period during which the customer is considered a PEP although he has already put down this position, has remained just like in the Commission's proposal, 18 months.

According to article 29 (2), each Member State shall establish a register with information on beneficial owners. However, it is left to the Member States to determine what form the register shall have. It shall also be decided on national level if credit institutions as obliged entities, which are bound to apply CDD, are granted access to the information of the registers. Fortunately, the Member

States hold on to the 25 % shareholding within a company in order to determine the beneficial ownership (article 3 (5)).

Besides, the Council agreement provides that breaches of the articles on customer due diligence, suspicious transaction reporting, record keeping and internal controls can entail sanctions of at least twice the deducted profit or at minimum EUR one million. According to article 56 (2a) failings of credit institutions as obliged entities can be punished alternatively with more severe sanctions: at minimum EUR 5 million. A breach can amount in the case of a legal person optionally to 10 % of the annual turn-over.

Moreover, Member States have positioned in favor of a general inclusion of all tax crimes into the list of predicate offences to money laundering (article 3 (4f)). The legally provided minimum sentence shall remain out of consideration.

Further actions

By this agreement the European Council has finalized the negotiations and has granted the mandate for trialog negotiations with the European Parliament to the next European Council Presidency. The EFBS will advocate intensively the adoption of its concerns in the compromise of the European institutions, which fortunately have already been included in the Parliamentarian text.

If you have further questions, please contact us at any time.

Yours sincerely,



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Annex:

- General Approach of the Council on the 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