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Adoption of a new position on rules aimed at preventing money laundering and terrorist financing

Deloitte Regulatory news alert

On 20 April 2015, the Council of the European Union has adopted its position on the rules aimed at preventing the use of the financial system for the purpose of money laundering or terrorist financing. The Directive aims at addressing the threat of money laundering by laying down additional measures; the Directive will repeal Directives 2005/60/EC and 2006/70/EC.

The position of the Council follows the Proposal for a Directive of the European Parliament and of the Council adopted on 05/02/2013. Main observations are as follows:

1. Retailers of high value goods and providers of gambling services

The new Directive broadens its scope to comprise unconventional channels to launder illicit proceeds. Retailers of high value goods and high value service providers apply customer due diligence when dealing with natural or legal persons trading in goods and carrying out transactions in cash of EUR 10 000 or more (whether in one transaction or in multiple transactions which appear to be linked). The Council has raised the threshold originally (in a former draft version) proposed of EUR 7500.

Providers of gambling services (including, but not limited to, casinos) are obliged to carry out customer due diligence. Member States may exempt certain providers of gambling services from these obligations, if the nature and the scale of the activity is at low risk. The use of exemptions should be considered as an exception and applied in a strict manner. Casinos can never be assimilated to a low risk activity. Customer due diligence is carried out when conducting transactions of EUR 2 000 or more (whether in one transaction or in multiple transactions which appear to be linked). The identity of the customer must be linked to the transactions carried out.

2. PEPs

Individuals who hold prominent public functions are exposed to greater risk of money laundering; they may transmit this risk to the financial sector when entering into a business relationship with an entity or professional of the financial sector. As a method of prevention, enhanced due diligence should be applied to politically exposed persons regardless whether they are domestic PEPs or PEPs residing in another Member State or in a third country.

3. Risk assessment

With the aim of identifying the risks of money laundering across Member States, the Council encourages a more centralised approach to risk assessment, which conceives a strengthened role of the Commission in coordinating cross-border risk assessment. A biennial report will indicate the sectors mostly at risk, the associated risks and the means used by criminals to launder illicit proceeds. The Commission will update its report with the intent of encouraging an effective response of national legislators and stakeholders. Similarly, Member States detect the threats of money laundering to which they are exposed and adopt appropriate countermeasures on a national level. This information is shared with the Commission, the European Supervisory Authority and the other Member States.

4. Tax crimes

The extended scope of the directive encompasses tax crimes within the definition of “criminal activity” with the intent of including tax crimes within the predicate offenses to money laundering. The text disregards the amendment of the European Parliament pointing to “tax offenses” (infractions fiscales pénales). Tax crimes constitute “criminal activity” when:

- Related to direct or indirect taxes;
- Punishable by deprivation of liberty or detention order for a maximum of more than 1 year; or
- Punishable by deprivation of liberty or detention order for a minimum of more than 6 months.

Despite Member States independently designate the conducts constituting tax offenses, differences in national laws cannot hamper cooperation exchange of information between FIUs.

5. Beneficial ownership

In line with the latest FATF Recommendations, the identification of the natural person, who ultimately owns or controls a legal entity or a transaction, is crucial to the fight against money laundering. A central register in each Member State will collect the information which will be accurate and kept up to date. Member States are responsible for the arrangement of the central register, however they may hold obliged entities accountable for its compilation. Competent authorities, FIUs, obliged entities (and, to a certain extent, any person or organisation that can demonstrate a legitimate interest) will have access to the register. The consultation of the register does not fulfil in itself customer due diligence obligations. The mechanism aims at combating the misuse of legal persons and legal arrangements and at increasing transparency.

6. Sanctions

Competent authorities should impose administrative sanctions of different type and extent; when the infringing conduct is subject to criminal sanctions under national law, Member States can decide if they want to impose also administrative sanctions in addition. However, if no criminal sanction is foreseen, administrative sanctions become mandatory. Sanctions can be applicable to legal persons, to management bodies and to natural persons engaged in the breach.

Future developments

The European Parliament will be able to adopt the directive at second reading at a forthcoming plenary session. Member States will have two years for the transposition into national law.

How can Deloitte help?

Deloitte provides assistance for compliance to natural and legal persons subject to anti-money laundering provisions. We can help organisations to face efficiently the challenge and contribute with:

- **Internal policies** - gap analysis of anti-money laundering internal policies against regulatory requirements
- **On-site assistance** - adoption of a risk-based approach on the job
- **Forensics investigations** - tailor-made inquiries and analyses

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