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## NOTE FOR THE ATTENTION OF MR. D. WRIGHT, DIRECTOR

**Subject: 3<sup>rd</sup> Money Laundering Directive  
Negotiations at the Council – Progress so far**

**End of the working group meetings round  
First meeting of the Financial Attachés on 8 November 2004**

This note intends to inform you of the progress achieved so far in the negotiations at the Council concerning the 3<sup>rd</sup> Money Laundering Directive. It will first deal with the procedural steps; then it will briefly explain where we stand in terms of substance.

## 1. PROGRESS SO FAR: PROCEDURAL STEPS

Discussions at Working Group level, which started on 13 July 2004, concluded on 25 October 2004 after 7 intensive meetings. Progress towards a draft acceptable to the almost totality of Member States has been remarkable, largely due to the excellent work done by the Dutch Presidency. It is worth noting that Member States accepted to work on this file although the Commission was only able to officially send the draft 3<sup>rd</sup> directive (with all linguistic versions) to the Council last week.

The first meeting of the Financial Attachés will take place on 8 November 2004. A second meeting could be convened if needed. The Dutch presidency intends to put this issue on the agenda for the COREPER meeting of 17 November (24 November at the latest). The aim is to be able to get political orientations from the ECOFIN Council in December. The Dutch presidency has started to associate Luxembourg officials (future presidency) to the preparation of the work.

## 2. MAIN RESULTS OF THE DISCUSSIONS

It appears from the discussions that **no real contentious elements remain**, although isolated Member States still maintain some reservations (mostly scrutiny reservations pending approval from capitals) or alternative proposals in some articles (no real change of substance). Further work may however still be needed in relation to the definition of “beneficial owner” (Article 3§8) and to disclosure of suspicious transactions reports to third persons (Article 25).

The current text from the presidency largely follows the Commission proposal and is certainly compatible with FATF standards, one of the main objectives of the reform. Many of the changes done enrich the Directive, for example by including more detailed language regarding the article on monitoring compliance and supervising the persons covered. **Key articles for the Commission remain almost unchanged**, at least from the substance point of view:

- Not only Member States can agree to the proposed **Comitology** (except for some the interpretation of some enough detailed definitions), but they also recognise its indispensability by imposing a deadline (6 months following entry into force of the Directive) on the Commission for adopting some of the implementing measures. Two Lamfalussy-style recitals have been added as well, leading to a kind of Lamfalussy Comitology procedure.
- A **legal base for funding FIU.NET** has been added, the network of financial intelligence units (FIUs). This Article will likely allow the Commission to sponsor the development of a CESR-type cooperation in this field in the future, if wished.
- The Directive covers both Money Laundering and **Terrorist Financing (TF)**. Member States and the Council LS support that TF will no longer be a modality of Money Laundering, but an offence in itself. The legal base (first pillar) is maintained.
- **Mutual recognition** of Customer Due Diligence procedures performed in other Member States, even if the documents are not the same, is accepted too, at least for the key professions.

The text departs from the Commission proposal insofar as it no longer contains explicit references to third pillar issues such as the request to criminalise money laundering and TF (the text of the second directive is maintained, requesting their prohibition) or the list of (indicative) sanctions. As regards the persons covered, service providers in general are not included either. Concerning Politically Exposed Persons (PEPs), enhanced customer due diligence procedures will only be required for non-domestic PEPs. Other changes aim at accommodating the enforcement structure in some MS which have empowered competent authorities other than FIUs to act in this field in the first place.

In **Conclusion**, we believe that the goal of the Dutch presidency to obtain political orientations in December from the ECOFIN Council is achievable.

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