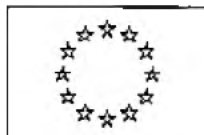


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 From: [REDACTED])

Sent: mardi 13 juillet 2004 10:08

To: [REDACTED]); [REDACTED])

Cc: [REDACTED]);



EUROPEAN COMMISSION

Internal Market DG

FINANCIAL MARKETS

Company law, corporate governance and financial crime

Brussels, 13 July 2004

MARKT G4 [REDACTED] D (2004)

NOTE TO MR A. SCHAUB, DIRECTOR-GENERAL

Subject: Rapid report on the first Council working group meeting on the proposal for the third Directive on money laundering and terrorist finance

GENERAL COMMENTS

- From the perspective of DGMARKT, the result of the first meeting can certainly be considered as very positive. The agenda concentrated on the scope, the definitions and the process of the identification of and the verification of the identity of the client and its beneficial owner.
- The existing translation problems were as a matter of fact accepted.
- The meeting was well chaired by the Netherlands presidency and the spirit in the meeting was very good, even the comitology provision was well received.

KEY ISSUES

- Definition of terrorist financing: As expected the Member States (MS) did not appreciate the solution as required by our Legal service. The MS favour treating money laundering (ML) and terrorist financing (TF) as separate crimes and define terrorist financing accordingly. The Commission has reserved its position and asked for the opinion of the Council legal service. *art. 1d 3(1)*
- Prohibition of money laundering and terrorist financing: As expected the MS did not appreciate the solution as required by Legal services and JAI, i.e. that MS ensure that ML and TF is a criminal offence. In stead all MS favour ensuring that ML and TF is prohibited, as in the existing Directive. The Commission has reserved its position. *art. 1*
- Large cash payments: As a compromise towards JAI, the proposed Directive was extended to persons trading in goods or providing services, whenever payment is made in cash in an amount of EUR 15000 or more. Generally, MS found this proposal going too far and not well underpinned. Scope needs to be narrowed down but some room for flexibility seems to exist. *art. 2(1)*
- Definition of ultimate beneficial owner: Generally, MS were remarkably positive on the proposed definition. This definition has been build upon that of the qualifying holder in the various Directives on financial institutions/markets. Some MS reserved their position to study the definition further. *art. 3(8)*

act 2.1.(3) b)

- Lawyers: No remarks were made on the inclusion of the lawyers! It is noted that the exact wording of the existing Directive has been included in the proposed Directive.
- Definition of serious crimes: Accepted by all MS. Noteworthy is that France did not touch upon this issue any more, having understood already before the meeting that its view was not supported. act 3 (7)
- Definition of Politically Exposed Persons (PEPs); A majority of MS seems to favour applying the definition to MS as well as third countries as the proposed Directive suggests. Particular problematic remains to make the definition work and to avoid an unnecessary administrative burden. To overcome these problems the Commission wondered whether signed statements by customers could overcome the problems. act 3 (10)
- Risk based approach: In conformity with the FATF recommendations the proposed Directive allows that the identification of and the verification of the identity of the customer and its beneficial owner to be applied on a risk-sensitive basis. From the perspective of cost effectiveness this approach is important. Quite some MS appreciate guidance on the scope of the risk based approach. The Commission suggested considering inclusion of this element in the comitology procedure.
- Simplified due diligence: MS are allowed not to apply identification and verification in the situations as mentioned in the proposal and those following from the comitology procedure. Some MS reserved their position. Discussion on MS favouring an exhaustive list and those favouring total flexibility goes on. The proposed Directive seems to be quite in the middle of this discussion.

NEXT STEPS

The timetable is very tight: a) 20.7.2004 next Council working group, in which the discussion of the remaining main issues will be finalised, i.e. termination of identification/verification of the customer, supervision, penalties and comitology; b) as from 17.9.2004 compromise text discussed in the Council working group; c) as from October 2004 financial attaches followed by Coreper; d) political agreement in the ECOFIN of December 2004. The planning of the EP is not yet known.

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