ASSOGESTIONI
associazione del risparmio gestito

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Directorate General
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Response to the Report from the Commission to the European Parliament and the Council on the application of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing

Assogestioni, the Italian association of asset management companies, welcomes the publication of the Commission Report on the application of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing and is pleased to have the opportunity to represent the position of his associates with regards to some specific points highlighted in the Document.

we support the Commission's approach aimed at promoting an homogeneous application of the Directive in order to ensure a level playing field among the EU Countries and the effectiveness of the Directive; however we propose some suggestions on some of the key points highlighted in the Report.

The numbering of the paragraphs below corresponds to the numbering in the Document.

2.1 Applying a risk based approach

We generally agree with the view that an harmonization among EU Countries is needed in order to ensure the effectiveness of the Directive and to facilitate and promote cross-border compliance.

In this view we deem that the Directive should set out a practical guidance to apply the risk based approach homogenously both at a national and at a supranational level. This process of harmonization should focus on: i) the enforcement of instruments aimed at preventing money laundering and terrorism financing; ii) the elimination of specific national requirements that weigh down the activity of obliged entities, distracting resources from the achievement of the common goal.

For example, the existence of different record procedures and record keeping rules affects the cross border cooperation and exchange of information.

Concerning the supervision activity of national Authorities, these should count on a set of common rules to identify and evaluate the specific risks the supervised entities face.

We also believe that a supranational assessment of financial sector riskiness is necessary.

2.3 Scope

We agree with the Commission on the opportunity of broadening the scope of the Directive beyond the existing obliged entities and we believe that a stricter regulation of the gambling sector is particularly needed. For example, the existence of bearer securities in this field of activity hampers the obliged entities from carrying out anti-money laundering and terrorism financing controls.

Moreover it should be clear that no national/supranational risk distinction should be made with reference to online gambling.

Concerning other types of financial agents, in order to ensure the effectiveness of the Directive application, we propose that all the agent types working on behalf of Financial Intermediaries should: belong to a specific category; subject to some kind of examination of competences; be licensed or registered to a specific list and be subject to a common regulation. No atypical figures should be admitted.

As for Real Estate/Letting agents we agree with the intention of better define Real Estate Agents and to explicitly include both these categories in the scope of the Directive.

2.4 Customer due diligence

On the proposals on Regular Customer due diligence requirements we express the following views:

- the threshold of €15,000 in Article 7(b) should not be reduced and a risk based approach should be adopted.
  However, if the Commission sees value in reducing the threshold, it should be made clear that it only applies with reference to single operations and it should not apply to fractional operations.
  Moreover, we believe that the threshold should be differentiated among financial sectors, depending on the specific money laundering and terrorism financing risk faced.

- we don't see merit in reducing the €1,000 threshold for electronic transfers set out in Regulation 1781/2006: this threshold seems appropriate in relation to the of the Regulation to prevent the use of the financial system for the purpose of money laundering and terrorism financing. We believe that its

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reduction would burden the activity of obliged entities without facilitating the common goal reaching.

- we agree with the need of an harmonization of the approach for customer identification and we support the proposal for a list of EU-wide recognized identity documents.

- In case of third party reliance, it is necessary to introduce a direct responsibility for the CDD executed by the third party: in other words, the financial institution that undertakes CDD is directly responsible for data acquired during the face-to-face business, even if it doesn't have a business relation with the customer. This additional provision could give flexibility and more responsibility to each part that participates in the CDD.
  For example: in the asset management environment in Italy, the CDD is not usually made by the asset management companies directly. The offer of asset management products is conducted by another financial intermediary belonging to the distribution channel (banks, transfer agents, etc.). In these cases it is important to recognize the responsibility for data collecting and transmission to the final intermediary (which is in the Italian business model, the asset management company), including the requirement to report suspicious transactions and maintain records.
  Also, when a transaction is paid by bank transfer in Italy, this does not include all the necessary data to complete the CDD, and in all cases where the asset management companies require these data, it is not obvious to have them unless this request is paid for or previously included in the agreement).
  In other words, while the Intermediary responsible for the direct identification shall be responsible for the correct application of the CDD, the Asset Management Companies shall be rather responsible for an appropriate due diligence on the Intermediary responsible for the direct identification and on the adequacy of the CDD procedure put in place by the Intermediary responsible for the direct identification, as indicated under the EU Directive 2005/60/CE and not on the correctness of the data provided by the Intermediary.

As for Simplified Due Diligence (SDD) requirements we believe that:

- it shouldn't be stated that the SDD is not a full exemption from Customer due diligence;

- the Directive should provide specific examples for categories of customers to which Simplified due diligence should apply;

- we support the elaboration of a further guidance to risk factors which would promote the homogeneous application of the Directive;

- a specification of a minimum set of measures that have to be taken by the obliged entities in SDD situations is not needed;

- a risk based approach is already stated for the application of SDD when

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opening a new business relationship with another FI licensed in the EU or treated as an equivalent third country already applies.

2.5 Politically Exposed Persons (PEPs)

We believe that the Third AMLD definition of Politically Exposed Person might create interpretation problems, in particular regarding the definition of "persons known to be close associates" of the PEP. We suggest that the Directive gives a more accurate definition of these figures.

Moreover, it is important that the obliged entities can have access to a common EU database, sponsored by Member States.

2.6 Beneficial ownership

To guarantee a level playing field in the application of the Third AMLD it is important to harmonize the interpretation of the definition of Beneficial owner: it should be firstly made clear whether the obliged entities should identify the Beneficial owner when the customer is a natural person or a legal entity.

We agree with both the considerations made in the EC Report: the Directive should better clarify the definition of beneficial owner in the light of the revision agreed by the FATF and the AMLC's conclusions, and it should include measures to promote the transparency of legal persons/legal arrangements.

Regarding this last point, we deem that a European database of beneficial owners of corporate entities should be created and made available to all obliged entities.

2.7 Reporting obligations

We strongly support the proposal for the introduction in the Directive of a clarification that reinforce the provisions requiring FIU's to timely feedback to reporting entities.

Sector and geographic risks should be assessed from the Authorities and not from the obliged entities since they don't have a global vision which is necessary to make a reliable evaluation.
On this purpose we propose that Member States draw up a list of subjects sentenced for money laundering or terrorism financing offences.

Director General

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