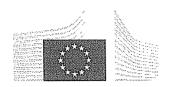
## **EUROPEAN COMMISSION**



Brussels, 21.8.2013 C(2013) 5499 final

Dear President,

The Commission would like to thank the Senát for its Opinion concerning 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 {COM(2013) 45 final}, and the Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds {COM(2013) 44 final}.

- 1. With respect to the possible incompatibility between the guarantees of fundamental rights and Article 44.3 of the Commission's proposal, which requires Member States to ensure that competent authorities take the necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in obliged entities, the Commission would like to draw the Senát's attention to Article 52 of the EU Charter of Fundamental Rights which recognizes that some limitations to fundamental rights may be laid down by law if proportionate and necessary, for example to protect fundamental rights and liberties of other people.
- 2. With respect to the administrative pecuniary sanction of up to € 5,000,000 for obliged entities that are natural persons, the Commission draws the Senát's attention to Article 57 of its proposed Directive which requires that competent authorities take into account notably the gravity and duration of the breach, the degree of responsibility, and the financial strength of the natural or legal person. Furthermore, recital 41 indicates that the range of administrative sanctions should be "sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics and areas of activity".
- 3. With respect to the abolition of a provision permitting the application of simplified customer due diligence in the case of small payments (Article 11.5(d) of Directive 2005/60/EC applied to low value payments in the case of electronic money), the

Mr Milan ŠTĚCH President of the Senát Valdštejnské naměstí 17/4 CZ – 118 01 PRAGUE 1 change in approach is fully in line with the Financial Action Task Force's risk-based approach - as agreed and endorsed by all EU Member States. The Commission would nevertheless point out that Annex II of the proposal for a Directive recognises as a "lower risk factor" "products where the risk of money laundering/terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money...)". The Commission's proposal foresees the possibility for Member States to apply simplified customer due diligence measures where a Member State or an obliged entity identifies areas of lower risk.

- 4. With respect to the proposal to limit the storing of documents and information for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or other competent authorities to a maximum period of five years, unless otherwise provided for in national law with a maximum retention period not exceeding ten years, the Commission's proposed approach is in line with the principals set out in Directive 95/46/EC on data protection).
- 5. Finally with respect to the Senát's view that the legal regulation of the prevention of money laundering and terrorist financing is based on an analysis of case studies of criminal activities and as far as possible on the findings of institutions dealing with monitoring and coordination of investigation of such criminal activities, such as EUROPOL, the Commission wishes to draw the Senát's attention to the impact assessment accompanying the proposal, and to stress that the elaboration of new rules has been evidence-based, drawing on typology reports from the Financial Action Task Force and other similar bodies, and consultations with both public and private sector representatives. The Commission is also in regular contact with Europol as well European Financial Intelligence Units.

The Commission hopes that these clarifications address the concerns raised by Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President/Member of the Commission