EUFederation
Factoring & Commercial Finance

To:
Krišjānis Kariņš
European Parliament
Rue Wiertz
Altiero Spinelli 14E206
1047 Brussels

Kraainem, 23 July 2014

Réf: EUF/ES/14-009

Dear Mr. Kariņš,

The EU Federation for the Factoring and Commercial Finance Industry (EUF) is the Representative Body for the Factoring and Commercial Finance Industry in the EU. The EUF is composed of national and international associations for the factoring and commercial finance industry that are active in the EU. Its members represent over 97% of the industry turnover and include 14 national factoring and commercial finance associations (representing 15 EU-member states, namely [in alphabetic order] Austria, Belgium, the Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden and the UK) and two international factoring associations, who in turn represent 192 factoring and commercial finance companies. The EUF seeks to engage with Government and legislators to enhance the availability of finance to business, with a particular focus on the SME community. Furthermore, the EUF acts as a platform between the factoring and commercial finance industry, and key legislative decision makers across Europe, providing a source of reference and expertise on the factoring and commercial finance industry.

It is in this role that the EUF wishes to comment on the Presidency's latest compromise 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 (cf. the Interinstitutional File 2013/0025 (COD), dated 26 May 2014, http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209752%202014%20REV%201):

In this compromise proposal for a 4th AML-directive there are two main issues on which we would like to draw your attention: (A) the new definition of "beneficial owner" and (B) the AML requirements for debtors in factoring transactions.

(A) NEW DEFINITION OF "BENEFICIAL OWNER"

Art. 3 para. 5a contains a definition of the term "beneficial owner" in the case of corporate entities. In this definition, a "shareholding or ownership interest of 25% or more" is deemed as a sufficient indication of direct ownership, which in turn is a prerequisite for being considered a beneficial owner of a corporate entity. In contrast to this proposed new rule, the current definition of a beneficial owner of corporate entities in Art. 3 para. 6a of the 3rd AML-directive 2005/60/EC speaks of "a percentage of 25% plus one share". This threshold of 25% plus one share is also contained in the European Parliament's legislative resolution of 11 March 2014 on the proposal for the 4th AML-directive.

Although the current threshold of "25% plus one share" and the threshold of "25% or more" as suggested by the Presidency's compromise proposal may look very much the same, they are not: Currently, only shareholding or ownership interests of more than 25% are relevant from an AML-perspective and have therefore been documented and are hence being monitored. Should the threshold change to 25% or more, also shareholding and ownership interests of exactly 25% would have to be ascertained, documented and monitored. Not only would this make changes necessary to e.g. intra-corporate organisational structures and rules as well as IT-systems, but this would also entail re-examinations of all

current and ongoing business relationships and occasional transactions in order to detect and encompass all cases in which shareholding and ownership interests of exactly 25% exist. This small change to the definition of the term "beneficial owner" would therefore massively increase the administrative effort for the enterprises in charge of adopting certain measure to prevent money laundering, however very probably without significantly increasing the number of beneficial owners or even of cases in which suspicions of money laundering arise – the cost/efficiency ratio of this legislative change is therefore negative.

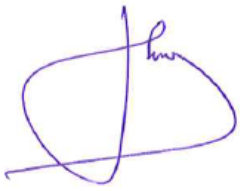
As we see no valid reasons for changing the aforementioned threshold and also in the interest of cutting red tape, the EUF therefore strongly advocates that the threshold of "25% plus one share" as contained in the current 3rd AML-directive 2005/60/EC is maintained in the definition of beneficial owners of corporate entities in the upcoming 4th AML-directive.

(B) AML REQUIREMENTS FOR DEBTORS IN FACTORING TRANSACTIONS

Furthermore, we wish to point out that a clarification or explanation as to who is to be considered as the customer in business relationships for AML-purposes should be introduced into the 4th AML-directive. For factoring and commercial finance, such clarifications and explanations have proven to be useful: In a number of EU member states (e.g. the United Kingdom, France, Spain and Germany), there are e.g. guidelines, mostly issued by or in cooperation with the financial supervisory authorities, which clarify that the seller of the receivable, i.e. the factoring client (not the debtor), is the customer in the factoring relationship. This follows from the principle that business relationships to customers are based on contracts – in factoring, such contracts regulate the sale to the factoring company of receivables owed to the seller by its clients (the debtors) and are generally only concluded between the seller of the receivable, i.e. the factoring client, and the buyer of the receivable, i.e. the factoring company. Hence, except for specific cases, no business relationship is established between the factoring company and the seller's clients (i.e. the debtors that shall only direct the payment of the sold receivables to the factoring company as a result of the sale of receivables) and formal KYC-measures such as identification only apply to factoring clients, but not to debtors. In the case of debtors, the risk-based approach which is currently already applied by factoring companies for entrepreneurial reasons is practice-oriented and sufficient and should not be altered. The EUF is very much in favour of clarifying this in the upcoming 4th AML-directive in order to (i) specify that, in factoring transactions, the business relationship mentioned under Art. 10 para (a) of the 4th AML-directive (according to which customer due diligence measures are required) is established only between the factoring company and the seller of receivables and (ii) avoid different interpretations of the term "customer" on the national level, thereby ensuring consistent harmonisation and a level playing field for factoring companies in the EU.

Please do not hesitate to contact the EUF should you require further explanations on the aforementioned issues or more information about the factoring business in Europe.

With kind regards,



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