

## **Joint EUF, Leaseurope and Eurofinas letter on the Proposal for a 4th Anti-Money Laundering Directive**

**The list of names of the key stakeholders to whom the letter has been sent:**

### **European Parliament:**

Krišjānis Kariņš, Member of the European Parliament

Judith Sargentini, Member of the European Parliament

Frank Engel, Member of the European Parliament

Peter Simon, Member of the European Parliament

Nils Torvalds, Member of the European Parliament

Timothy Kirkhope, Member of the European Parliament

Petr Ježek, Member of the European Parliament

### **European Council:**

Massimiliano Mora, Permanent Representation to the EU, Italy

Cécile Chaduteau-Monplaisir, Permanent Representation to the EU, France

Silvia Boch, Permanent Representation to the EU, Germany

Eric Van Den Abeele, Permanent Representation to the EU, Belgium

Toomas Vapper, Permanent Representation to the EU, Estonia

Ryan Borg, Permanent Representation to the EU, Malta

Roland Meinecke, Permanent Representation to the EU, Austria

Antony Manchester, Permanent Representation to the EU, the United Kingdom

Juan Ramón Calaf Solé, Permanent Representation to the EU, Spain

Natalia Radichevskaia, Permanent Representation to the EU, Luxembourg

Niels Bartholdy, Permanent Representation to the EU, Denmark

Klein Anke, Permanent Representation to the EU, the Netherlands

Irene Kirwan, Permanent Representation to the EU, Ireland

Aleksandra Szkutnik-Wolszczak, Permanent Representation to the EU, Poland

Patrik Granstrom, Permanent Representation to the EU, Sweden

Jani Pitkaniemi, Permanent Representation to the EU, Finland

Anton Comanescu, Permanent Representation to the EU, Romania

Vera Spratley, Permanent Representation to the EU, Portugal

Roy Nitze, Permanent Representation to the EU, Germany

**Brussels, 15 October 2014**

**Re: European Commission's Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4<sup>th</sup> AML Directive)**

Dear Mr/Ms,

EUF, Leaseurope and Eurofinas take note of the adoption by the Council of its position on the European Commission's Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4<sup>th</sup> AML Directive). We are now looking forward to trilogue negotiations and are confident that institutions will reach consensus to achieve a workable regulatory framework.

We would like to draw your attention to two main issues of key importance for the industries that the undersigned represent: i) the definition of beneficial owner (Art. 3. 5a) and ii) administrative and pecuniary sanctions (Art. 56).

### **1. Definition of "Beneficial Owner"**

Art. 3. 5a of the Council's position includes a definition of the term "beneficial owner" 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<sup>1</sup>.

This contrasts with the existing definition of beneficial owners, which according to Directive 2005/60/EC (the 3<sup>rd</sup> AML Directive), are those natural persons who own or control a percentage of 25% plus one share in a legal entity. This approach has been preserved in the European Parliament's legislative resolution of 11 March 2014 on the proposal for a 4<sup>th</sup> 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 similar, 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 monitored. Should the threshold change to 25% or more, also shareholding and ownership interests of exactly 25% would have to be identified, documented and monitored. Not only would this lead to changes in intra-corporate organisational structures and rules as well as IT systems, but this would also entail a

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<sup>1</sup> See Council of the European Union, General Approach on the Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 2013/0025 (COD), 13 June 2014.

full re-examination 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.

What could be seen as a minor change to the definition of “beneficial owner” would actually lead to a huge administrative burden for the obliged entities in charge of adopting certain measure to prevent money laundering. It is unlikely that this change leads to any significant increase in 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.

Against this backdrop, the EUF, Leaseurope and Eurofinas strongly advocate that the **threshold of “25% plus one share”** as contained in the current 3<sup>rd</sup> AML directive 2005/60/EC is **re-included and thus maintained in the definition of beneficial owners of corporate entities in the upcoming 4th AML directive**. Should this threshold however be changed, we strongly believe that this new definition should only apply to future business relationships, i.e. those which are established after the 4<sup>th</sup> AML Directive enters into force.

## 2. Administrative and Pecuniary Sanctions

While we support the European Commission’s proposal for a revised directive and the implementation of a risk based regime, and indeed punitive sanctions to provide a strong regulatory deterrent, we do not believe the Council’s proposed modification of Art. 56 is clearly worded and equitable for a number of affected commercial entities. According to the Council’s proposed modification, Member States shall ensure that “in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or 10% of the total annual turnover” can be applied (Art. 56.2a).

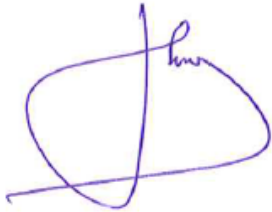
By combining the words “maximum” and “at least”, the wording of the proposed modification can lead to misunderstandings. Moreover, the draft Art. 56.2a does not recognise the very broad scope of the proposed directive and the fact that it will impact uniformly on obliged entities and indeed credit and financial institutions that all vary significantly in scale and importance. We are concerned that this modification has the capacity to cause serious and perhaps terminal commercial damage to a number of smaller obliged entities, who are currently within the scope of the proposed 4<sup>th</sup> AML Directive and subject to Art. 56.

Any provision on sanctions should, in our view, afford some recognition of the variation in size of obliged entities and allow for a subjective appraisal of those obliged entities, accounting for their strategic importance within the financial system and of their degree of involvement in any particular regulatory breach. Failing to do so, would subject all smaller firms, for example involved in credit, leasing, factoring or financing of commercial transactions to more disproportionate sanctions than those proposed for larger undertakings.

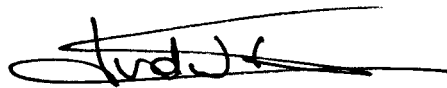
The undersigned therefore ask for a **return to the original proposal of the European Commission**, which to date has been largely supported (albeit with some small modification) by the European Parliament.

Please do not hesitate to contact us should you require further explanations on the aforementioned issues or more information about the industries we represent.

Yours sincerely,



John Gielen  
Chairman  
EUF



Tanguy van de Werve  
Director General  
Leaseurope & Eurofinas

### About Us

**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 factoring industry's turnover, which amounted to 1.26 trillion Euros in 2013 and can therefore be seen as an increasingly important mechanism for the funding of the real economy and especially of SMEs. More information at [www.euf.eu.com](http://www.euf.eu.com)

**Leaseurope** brings together 44 member associations representing the leasing, long term and/or short term automotive rental industries in the 33 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate). It also includes the short term rental of cars, vans and trucks. It is estimated that Leaseurope represents approximately 92% of the European leasing market and in 2013, total new leasing volumes worth 251.9 billion Euros were granted by the firms represented through Leaseurope's members. More information at [www.leaseurope.org](http://www.leaseurope.org)

**Eurofinas**, the European Federation of Finance House Associations, is the voice of consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent consumer credit providers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. It is estimated that together Eurofinas members granted over 321.7 billion Euros worth of new loans during 2013. More information at [www.eurofinas.org](http://www.eurofinas.org)

### Contact persons

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