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ASSISTANT SUPERVISOR

Ms. Tiina ASTOLA
Director-General
DG JUSTICE
European Commission
Brussels

Brussels, 21 February 2017
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correspondence

Subject: Proposed Regulation of the European Parliament and of the Council on controls on cash entering or leaving the union and repealing Regulation (EC) no 1889/2005

Dear Ms Astola,

On 21 December 2016, the Commission published a proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the union and repealing Regulation (EC) no 1889/2005 (“Proposal”)¹.

The stated purpose of the Proposal is to bring what is also referred to as the Cash Control Regulation (“CCR”) into line with international norms and best practices in the fight against money laundering and the financing of terrorism. In particular, the CCR lays down a framework of rules to protect the Union against cross-external border transfers of cash by money launderers and terrorist financiers seeking to circumvent controls on the formal financial system. In doing so, the Proposal provides for a legal framework that complements Directive (EU) 2015/849 (“AML Directive”) currently under review.

The Proposal entails the processing of personal data, including, among other things, the personal data relating to the declarant, the owner, the sender and the recipient of the cash being declared.

We have reviewed the Proposal and have the following observations:

- We welcome the fact that the Proposal, in introducing updated measures on cash control, does not depart from the principle of risk prevention, whereby policy action appears to be proportionate to the estimated social risk (see in particular Articles 4 and 5(4) of the Proposal).

¹ COM(2016) 825 final.

- We welcome that Article 12 of the Proposal provides for measures aiming at ensuring the protection of individual rights to privacy and data protection, including the provision of a maximum retention period.
- We understand the key role of the FIUs in fighting money laundering and terrorism financing and the importance of granting them enhanced powers to obtain information. At the same time, we note that these powers entail a greater data protection impact. In this respect, we would like to recall our observations on FIUs in the recent EDPS Opinion 1/2017 on the amendments to the AML Directive² and in the initial Opinion on the AML Directive³.
- In relation to cases that require the transfer of personal data to third countries, we welcome that Article 10 of the Proposal provides for the application of the relevant data protection safeguards.

Yours sincerely,

(signed)

WOJCIECH RAFAŁ WIEWIÓROWSKI

Cc: Mr Jordi AYET PUIGARNAU, Director, General Secretariat.
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Mr. Bruno GENCARELLI, Head of Unit - Data Protection, DG JUST
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² EDPS Opinion 1/2017 of 2 February 2017.

³ EDPS Opinion of 4 July 2013.