POSITION ON THE PROPOSED AMENDMENTS TO THE FOURTH ANTI-MONEY LAUNDERING DIRECTIVE (4AMLD)

1 Executive Summary

The **Prepaid International Forum** (PIF) fully **supports the regulatory goal** to combat the use of prepaid products for illicit purposes as well as the **evidence-driven, risk-based** approach to the prevention of money laundering and terrorist financing in 4AMLD.

a) *Suppression of the Customer Due Diligence (CDD) Exemption for the Online Use of Prepaid Products*

The European Commission's proposal **to completely suppress** the CDD Exemption **for the online use** of prepaid products, **irrespective of the money laundering and terrorist financing risks related to these products,** however **constitutes an unbalanced and disproportionate approach**, which puts a massive burden on the regulated e-money sector for online payments and **threatens the continued commercial viability of issuers of low-value, low-risk prepaid payment instruments.**

At the same time **unregulated products** that are not subject to any KYC requirements and oversight at all are **explicitly excluded** from the scope of the new regulation. This is **inconsistent** with the regulatory goal to combat misuse of products for money laundering and terrorist financing.

In a multi-channel society where the lines between offline and online commerce are blurring, customers should be able to use prepaid products **online and offline under the same conditions**. A discrimination against modern payment methods which are designed for the use on the internet and which promote the growth of the e-commerce is also **contradictory to the goals of The European Single Market Strategy**.

b) *Lowering of the Thresholds of the CDD Exemption for Non-Reloadable Prepaid Products*

The Commission's proposal to lower the thresholds for non-reloadable prepaid proposals from € 250 to € 150 **discriminates against** issuers of low-value, low-risk **regulated** restricted loop and scheme-badged open loop products that are principally used to service the personal gift (e.g. multi-store gift cards) and **corporate reward markets**. Further restrictions from the current € 250 limit will move higher value gifting and corporate rewards to **unregulated alternatives** leading to an **unfair** and **distorted** market.

2 About PIF

PIF is the not-for-profit trade association of businesses involved in the supply of prepaid products and services. PIF is dedicated to advancing the success of the industry to the benefit of its members and their customers, advocating for standards and policies that protect and enhance the use of prepaid solutions.

Our members in Europe represent issuers of prepaid and e-money products and solutions and it is in this capacity that we state our position on the proposed amendments to 4AMLD.

3 PIF Position on Amendments to 4AMLD

a) *Suppression of the Customer Due Diligence (CDD) Exemption for the Online Use of Prepaid Products*

On July 5th, 2016, the Commission published a proposal to amend 4AMLD. The proposal (5AMLD) sets out a series of measures to counter the financing of terrorism in addition to the just recently adapted and not yet transposed 4AMLD. Despite the fact that the rules of **4AMLD have not yet been in force**, the Commission argues that 4AMLD still leaves gaps, for instance with regard to anonymous "prepaid cards". With their proposal, the **European Commission seeks to address those gaps** even before **there is any empirical evidence on the effects of the recently adopted 4AMLD**.

PIF strongly opposes the proposed complete suppression of the CDD Exemption for the online use of prepaid products (Art 12 para 2 of 5AMLD), as this requires identification of users of regulated prepaid products for online use, regardless of the money laundering and terrorist financing risk related to these products.

The **general prohibition** to use prepaid products online without identification does not reflect the spirit of evidence-driven, risk-based approach and it **ignores the variety and diversity of low-value, low-risk products currently relying on the CDD Exemption** and the fact that the **terrorist financing risk associated with e-money was found to be low in the UK national risk assessment published by HM Treasury in October 2015** (section 9., in particular 9.5).[1]

Furthermore, it needs to be noted that the proposals do not reflect on the fact that **the industry provides for much stronger capabilities to detect and stop suspicious usage behaviour in real-time for the online use of prepaid products than is the case for their offline use.** The prepaid industry has invested

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf

substantial amounts of money in the creation and continual improvement of transaction monitoring systems to prevent their products from being used for unlawful purposes such as fraud, money laundering and terrorist financing. For **non-reloadable prepaid products**, issuers' transaction monitoring systems invariably allow them to effectively link multiple transactions to specific computing devices; by blocking computing devices which are linked to suspicious usage patterns issuers can mitigate the risk of these products for being used for money laundering and terrorist financing purposes. It is not necessary to directly identify the user to apply these measures.

Identification requirements for all online use of prepaid products, regardless of the face value of the product (i.e. identification requirements also for the use of 10 Euro face value), even in low-risk scenarios, is **by no means proportionate or justifiable under a risk-based approach** towards Anti-Money Laundering and Counter Terrorist Financing.

By asking customers using non-reloadable low-value, low-risk prepaid products to identify themselves the European Commission thus not only creates unnecessary hurdles for online payments in the Digital Single market, but also interferes with the fundamental rights of European citizens, in particular data protection rights.

PIF is further concerned that <u>**unregulated products**</u> **that are not subject to any KYC requirements and oversight at all are** <u>**explicitly excluded**</u> **from the scope of the new regulation.**

b) <u>Lowering of the Thresholds of the CDD Exemption for Non-Reloadable Prepaid Products</u>

PIF opposes the imposition of lower thresholds, in particular for regulated non-reloadable prepaid products that are principally used to service the personal gift and corporate rewards market.

Firms issuing regulated prepaid gift cards are regulated by their local financial regulator and are therefore subject to stringent controls and audits to ensure that the businesses and products they offer are compliant with ongoing **AML/CTF monitoring requirements and reporting requirements for regulated products**. Therefore, transaction tracking and monitoring to detect and prevent suspicious usage is the norm within the regulated prepaid product sector. Every transaction is traced to the point of use both online and offline. This also applies to low-value, low-risk products in the regulated market, **whereas there are no such requirements for unregulated prepaid products**.

Due to the absence of any regulation for closed loop gift card products, unregulated products dominate the marketplace with 70%+ market share in most EU markets already.

Further restrictions from the current €250 limit (with national authority limits up to €500) on the regulated prepaid sector will discriminate against these regulated products and **move higher value gifting and corporate rewards** to **closed loop alternatives.** This will lead to an **unfair and distorted market** and **goes against the grain of the evidence-based, risk-based approach in 4AMLD.**

4 Conclusion

The approach taken by the European Commission places **an immense burden** on the **regulated e-money sector**, specifically for online payments and regulated restricted and open loop products. At the same time, **unregulated products** that are not subject to any KYC requirements and oversight at all are **explicitly excluded** from the scope of the new regulation.

If the proposal to completely ban regulated anonymous prepaid products from online payment is adopted, this will drive more and more customers to using these more convenient and accessible (no identification required) unregulated equivalents for online payments (i.e. limited network products). **These unregulated products, such as closed loop products offered by car hire companies and hotel chains that are exempted from any KYC requirements do however pose a higher risk of money laundering and terrorist financing as they are completely anonymous and do not provide any traceability if abused by criminals to orchestrate their activities online.**

In order to **avoid competitive disadvantages** for regulated e-money business vis-à-vis unregulated operators and to **remove unnecessary obstacles** for the use of non-reloadable low-value, low-risk products by millions of ordinary, law-abiding European citizens **PIF calls to remove the restriction of the CDD Exemption for the online use of regulated prepaid products, maintain the current thresholds of the CDD Exemption for regulated non-reloadable prepaid products and create a level playing field for online and offline payments.**