

COMMISSION PROPOSES TO STRENGTHEN EU MONEY LAUNDERING AND TERRORIST FINANCING RULES

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Following the European Union (EU) Member States' transposition deadline of the Fifth Anti-Money Laundering Directive (5AMLD) into national law on 10 January 2020, the European Commission (Commission) issued an [action plan](#) (Action Plan) on anti-money laundering (AML) and counter-terrorist financing (CTF) on 7 May 2020, together with a [public consultation](#). The Action Plan and its proposals will now be considered at political level, and interested stakeholders may submit their views on the consultation by 29 July 2020.

A recent increase in financial crime activities in the context of the COVID-19 outbreak, along with a string of scandals in EU Member States, has underscored the need for centralized measures to increase the EU's efforts to combat money laundering and terrorist financing. The Action Plan proposes the implementation of a comprehensive AML/CTF policy adapted to the specific challenges the EU currently faces, designed in an innovative way. The Commission notes that a stronger AML/CTF framework will further enhance the integrity of the EU financial system, which is crucial to complete the Banking Union and the Economic and Monetary Union.

The Action Plan is built around six pillars, which, combined, aim to ensure that the EU AML/CTF rules are more harmonized and effective. The six pillars intend to:

ENSURE THE EFFECTIVE IMPLEMENTATION OF THE EXISTING EU AML/CTF FRAMEWORK

The Commission pledged to monitor the effective transposition and implementation of the AML framework. Importantly, it has sent letters to ten Member States that have not implemented 5AMLD in their national legal systems by the January 2020 deadline. In particular, concerning increasing transparency requirements regarding the beneficial ownership of companies, the Commission committed to scrutinize the setup of the central bank account mechanisms and the beneficial ownership registers by Member States. Next year will be significant for the EU AML/CTF regime, with the interconnection of the beneficial ownership registers becoming operational and the launch of the Commission's assessment on the effective application of the 4AMLD. The Action Plan further notes that the Commission will support Member States in closing some of the loopholes of the AML/CTF framework through the European Semester process.

ESTABLISH AN EU SINGLE RULEBOOK ON AML/CTF

The Commission acknowledges that the current AML/CTF framework includes far-reaching measures ranging from the expansion of the scope of the obliged entities and the list of predicate crimes to enhanced cooperation

between relevant authorities. However, the Commission takes the view that the Member States' fragmented regulatory approaches hinder its effectiveness, and therefore, a more granular and less divergent framework is needed. In this regard, the Commission will, by Q1 2021, assess how a single rulebook in the field of AML/CTF would be best delivered, including by turning certain parts of the 5AMLD into a regulation, developing technical standards, and further harmonizing specific areas, such as: (i) the implications of technological innovation, taking into account the expansion of the scope of sectors or entities covered by AML/CTF rules; (ii) data protection issues for both obliged entities and supervisors; and (iii) the interaction with other financial services' legislative files, such as the Bank Recovery and Resolution Directive, the Deposit Guarantee Schemes Directive, and the Payment Account Directive.

ESTABLISH AN EU AML/CTF SUPERVISOR

The Action Plan urges that the EU cannot afford to wait to build an effective AML/CTF supervisory system. Currently, the European Banking Authority (EBA) is [solely responsible](#) for leading, coordinating, and monitoring AML/CTF efforts across the entire EU financial sector. As part of its AML mandate, the EBA recently issued its [first report](#) on competent authorities' approaches to the AML/CTF supervision of banks, highlighting amongst other things that national supervisors should move away from tick box compliance towards assessing the effectiveness of banks' AML/CFT systems and controls. However, the Commission notes that entrusting the EBA with additional AML/CTF supervisory responsibilities would require a significant governance reform of the authority as well as additional capacity building.

The Commission will therefore consider options on the functions, scope, and structure of a potential new, dedicated EU-level AML/CTF supervisor by Q1 2021. The Commission's proposal follows up on the [Economic and Financial Affairs Council conclusions](#) of 5 December 2019, which invited to explore “conferring certain responsibilities and powers for AML supervision to a Union body with an independent structure and direct powers vis-à-vis certain obliged entities chosen by the EU body in accordance with a risk-based approach.” More concretely, a new body would allow maximum flexibility to design a tailored AML/CTF system in terms of organization with a simplified and swift decision-making process. The Action Plan indicates that the new supervisory entity could be tasked, *inter alia*, with: (i) the authority to conduct on-site inspections, (ii) the potential responsibility for the supervision of both the financial and nonfinancial sector, and (iii) the potential implementation of sanctions. Importantly, the Commission recognizes that there might be issues related to the funding of a new body, particularly in the current circumstances.

DEVELOP A SUPPORT AND COOPERATION MECHANISM FOR FINANCIAL INTELLIGENCE UNITS (FIUS)

The Commission points out a number of weaknesses on the way domestic authorities implement the current EU framework requiring obliged entities to report all suspicious transactions to the national FIUs. In particular, whereas FIUs must give feedback to obliged entities in relation to their reporting, such feedback remains limited across the EU. In this regard, the Commission will explore a number of options on the role and structure of a possible EU coordination and support mechanism for FIUs. The sustainability of the FIU.net, currently managed by Europol, is also important. Taking into consideration the urgency to overcome the current problems hampering information exchange and data matching, the Commission will step up its role from Q4 2020.

ENFORCE EU CRIMINAL LAW PROVISIONS AND INFORMATION EXCHANGE

The Action Plan takes stock of recent legislative measures and institutional arrangements on the sanctioning of money laundering across the EU and facilitating judicial and police cooperation. Direct access to the central bank account mechanism; the establishment of the European Economic and Financial Crimes Centre, expected to become operational in the course of 2020; and the funding of the Anti-Money Laundering Operational Network, which promotes cross-border financial investigations, are among the relevant initiatives. In this context, the Commission deems it essential to encourage public-private partnerships (PPPs) with the caveat of complying with data protection rules. By Q1 2021, the Commission will issue guidance on the role of PPPs to clarify and enhance data sharing.

STRENGTHEN THE INTERNATIONAL DIMENSION OF THE EU AML/CTF FRAMEWORK

While the Financial Action Task Force (FATF) remains the international standard setter as regards the identification of high-risk jurisdictions, the Action Plan highlights that the EU should strengthen its autonomous policy towards non-EU countries that might pose a threat to the EU financial system. This policy entails early dialogue with these countries, close cooperation with Member States throughout the process, and the identification of remedial actions. Notably, the Commission envisages an enhanced role in AML global standard setting, including representing the EU at the FATF. In line with this, the Commission issued a [new methodology](#) on the assessment of high-risk third countries. Importantly, the high-risk third country AML list should not be mistaken with the EU list of non-cooperative tax jurisdictions. Even though the two lists may overlap in some cases, they have different objectives and criteria. The latter is supervised by the Council of the EU, whereas the AML list is established by the Commission based on EU AML rules.

The new methodology for identifying high-risk third countries provides for: (i) the interaction between the EU and FATF listing process, (ii) an enhanced engagement with these countries subject to autonomous assessment, and (iii) reinforced consultation of Member States' experts and competent authorities. Commission Executive Vice-President Valdis Dombrovskis recently [stated that](#), due to the COVID-19 emergency, the listing will enter into force on 1 October 2020.

It remains to be seen whether the proposed changes will come at a significant cost for the obliged entities, including as regards proposals for private sector entities to fund the new supervisory activities. Interested stakeholders may submit their view on the Action Plan's consultation by 29 July 2020. The Commission plans to deliver on all the elements included in the Action Plan by early 2021.

FOOTNOTES

¹ Obligated entities are: virtual currency providers and custodian wallet providers; art traders when the value of transactions or series of linked transactions amount to €10,000 or more; those who provide similar services to auditors, external accountants, and tax advisors as a principal business or professional activity; and estate agents who act as intermediaries in the letting of property where the monthly rent is equivalent to €10,000 or more.

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