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PARLIAMENT AND THE COUNCIL Towards better implementation of the
EU's anti-money laundering and countering the financing of terrorism
framework

Delegations will find attached document COM(2019) 360 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**Towards better implementation of the EU's anti-money laundering and countering the
financing of terrorism framework**

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework

I. INTRODUCTION

Risks of money laundering and the financing of terrorism remain a major concern for the integrity of Union's financial system and the security of its citizens. According to Europol,¹ as much as 0.7-1.28% of the European Union's (EU) annual Gross Domestic Product is 'detected as being involved in suspect financial activity'.² The fight against money laundering and terrorism financing is therefore an important priority for the Union and part of delivering the Security Union.

Over time, the Union has developed a solid regulatory framework for preventing money laundering and terrorist financing, in line with international standards adopted by the Financial Action Task Force. The regulatory framework needs to keep pace with the increasing integration of financial flows in the internal market, the evolving trends, technological developments and the ingenuity of criminals to exploit any gaps or loopholes in the system.

This Communication summarises a set of reports relating to the Union's legal framework for preventing money laundering and terrorist financing and its implementation. It is accompanied by the Commission's biennial supranational risk assessment³ of money laundering and terrorist financing risks facing the Union's internal market, as well as an assessment of recent alleged money laundering cases involving EU credit institutions, and Reports on cooperation between Financial Intelligence Units⁴ and on the interconnection of national centralised automated mechanisms of the Member States on bank accounts.⁵

The findings set out in this Communication and in the reports adopted today are intended to inform the debate about how the anti-money laundering/countering the financing of terrorism framework could be further improved and to provide the basis for further discussions with relevant stakeholders.

¹ Europol is the EU's law enforcement agency, <https://www.europol.europa.eu/>

² Europol Financial Intelligence Group, Report '*From suspicion to action*', 2017: <https://www.europol.europa.eu/publications-documents/suspicion-to-action-converting-financial-intelligence-greater-operational-impact>

³ Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities COM (2019) 370.

⁴ Report from the Commission to the European Parliament and the Council assessing the framework for cooperation between Financial Intelligence Units COM(2019) 371

⁵ Report from the Commission to the European Parliament and the on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the Member States on bank accounts COM(2019) 372.

II. CONTEXT: DEVELOPMENT OF THE LEGAL FRAMEWORK TO DATE

The Union has considerably strengthened its legal framework on preventing money laundering and terrorist financing in recent years. The 4th Anti-money Laundering Directive⁶ was adopted in May 2015 and had to be transposed by Member States by June 2017⁷.

As part of the Action Plan for strengthening the fight against terrorist financing adopted in February 2016⁸, and in response to the Panama Papers revelations of April 2016, the 5th Anti-money Laundering Directive⁹ was adopted in April 2018 and Member States are to transpose it into national law by January 2020. This revision increases transparency of beneficial ownership information, gives Financial Intelligence Units wider access to information, enhances the cooperation between supervisors, and regulates virtual currencies and pre-paid cards to better prevent terrorist financing.

As regards the financial sector, new rules on information sharing and dissemination should significantly improve cooperation among prudential and anti-money laundering/countering the financing of terrorism supervisors¹⁰, and strengthen the European Banking Authority's role in ensuring compliance with Union rules and enhancing cooperation on issues related to anti-money laundering and combating of terrorism financing.

Moreover, Directive 2018/1673 on combating money laundering by criminal law¹¹ complements this preventive framework by harmonising the definition of the criminal offence of money laundering and related sanctions. The Directive entered into force in December 2018 and Member States have until December 2020 to transpose it.

Directive 2019/1153 facilitating the the use of financial and other information¹² further strengthens the criminal law legal framework by speeding up the access to financial information for law enforcement authorities and by enhancing the exchange of financial information between law enforcement authorities and Financial Intelligence Units. The Directive will enter into force in August 2019 and Member States will have until August 2021 to transpose it.

⁶ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73.

⁷ The Commission is assessing the transposition of the 4th Anti-Money Laundering Directive, while also working to verify that the rules are implemented by Member States. The Commission has launched infringement procedures against all 28 Member States as it assessed that the communications received from the Member States did not represent a complete transposition of this Directive.

⁸ COM(2016) 050 final.

⁹ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156, 19.6.2018, p. 43.

¹⁰ Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, OJ L 150, 7.6.2019.

¹¹ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law; PE/30/2018/REV/1; OJ L 284, 12.11.2018, p. 22–30.

¹² Directive (EU) of the European Parliament and the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, OJ L 186, 11.7.2019.

III. MONEY LAUNDERING AND TERRORISM FINANCING RISKS AND AREAS FOR IMPROVEMENT

Despite the recent enhancement of the legislative framework, challenges remain. The Commission publishes today a series of reports that assess risks and identify areas for improvement.

a) Assessment of risks affecting the Union

Firstly, the Commission presents a **supranational risk assessment** of the money laundering and terrorist financing risks affecting the Union internal market and relating to cross border activities, as required by Article 6 of the 4th Anti-Money Laundering Directive. It updates the first supranational risk assessment adopted in 2017¹³ and follows up on recommendations made to actors involved in the fight against money laundering and terrorist financing.¹⁴

The report shows that most recommendations of the first supranational risk assessment have been implemented by the various actors. At the same time, some horizontal vulnerabilities remain, particularly on anonymous products, on identification of beneficial owners and on new unregulated products like virtual assets. Some of them are expected to be addressed through the upcoming transposition of the 5th Anti-Money Laundering Directive, for example through the inclusion of virtual currency providers in the scope of the Directive and the expansion and wider accessibility of beneficial ownership registers. Other horizontal vulnerabilities relating to Financial Intelligence Units and financial supervision have been identified in the Commission's report on Financial Intelligence Units and the Commission's report on the assessment of recent alleged anti-money laundering cases involving EU credit institutions. The report makes recommendations for each sector and the compliance with these recommendations will be followed up in the next supranational risk assessment to be issued within two years.

b) Areas for improvement of the EU anti-money laundering / terrorism financing framework

The report on the **assessment of recent alleged money laundering cases involving EU credit institutions**¹⁵ draws on facts from case studies covering a sample of ten public cases involving credit institutions during the period 2012-2018. It assesses the role of the credit institutions, and the powers and actions of the anti-money laundering/countering financing of terrorism and prudential supervisors. The report is presented as a response to the Council conclusions on an Anti-Money Laundering action plan of 4 December

¹³ COM(2017) 340 final, 26.6.2017.

¹⁴ The assessment of risks associated with third countries posing significant threats to the Union financial system remains a distinct process from this supranational risk assessment and is conducted through the Commission delegated acts identifying such high-risk third countries. The current list of high-risk third countries is set out in Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, as last amended by Delegated Regulation (EU) 2018/1467 of 27 July 2018. Following the Council's rejection of the Delegated Regulation adopted by the Commission on 13 February 2019, which would have replaced the current list, the Commission is engaging with the European Parliament and Council on a refined methodology and has intensified its engagement with relevant third countries and with the Financial Action Task Force (FATF).

¹⁵ Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions COM(2019) 373.

2018,¹⁶ that invited the Commission to conduct “a post-mortem review of the recent alleged money laundering cases involving EU credit institutions.”

The analysis of the selected cases revealed substantial incidents of failures by credit institutions to comply with core requirements of the Anti-Money Laundering Directive, such as risk assessment, customer due diligence, and reporting of suspicious transactions and activities to Financial Intelligence Units. In some cases, supervisors were effective in pre-emptively identifying shortcomings in credit institutions and requiring remedial action, but in a number of other cases, supervisors only intervened after significant risks had materialised or in the face of repeated compliance and governance failures. The timeliness and effectiveness of subsequent supervisory measures imposed on credit institutions varied greatly. Group supervision from an anti-money laundering and countering of financing terrorism perspective was largely deficient. Regulatory and supervisory fragmentation impinged on the effectiveness of cooperation among various actors concerned.

The report on **Financial Intelligence Units**¹⁷ assesses the framework for Financial Intelligence Units’ cooperation with third countries and obstacles and opportunities to enhance cooperation between Financial Intelligence Units in the European Union, including the possibility of establishing a coordination and support mechanism. The report is published in response to the legal obligation on the Commission under Article 65(2) of the Anti-Money Laundering Directive.

The assessment showed that some Financial Intelligence Units fail to engage in a meaningful dialogue with obliged entities by giving quality feedback on suspicious transaction reports. The lack of templates for reporting also hampers the quality of the reports by obliged entities. Several Financial Intelligence Units do not fully comply with their obligation to exchange information with other Financial Intelligence Units. The recurrent technical difficulties in the functioning of the FIU.net seem to have been an important factor and make it more cumbersome for Financial Intelligence Units to share information. The assessment also showed that the lack of regulation of exchanges of information between Member States’ Financial Intelligence Units and Financial Intelligence Units of third countries led to a non-harmonised approach to such exchanges. The compliance of such exchanges with the Union’s data protection framework also needs to be ensured.

Finally, the report on the **interconnection of national centralised automated mechanisms of the Member States on bank accounts**,¹⁸ is presented as a response to Article 32a(5) of the Anti-Money Laundering Directive which requires the Commission to assess the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the centralised automated mechanisms. Therefore, the report assesses the various IT solutions at EU level, already operational or being currently under development, which may serve as models for a possible interconnection of the centralised mechanisms. The report concludes that the interconnection is technically feasible and that, given that a future EU-wide interconnection of the centralised mechanisms would speed up access to financial information and facilitate cross border cooperation, the Commission intends to further consult with relevant stakeholders, governments, as well as Financial Intelligence Units, law enforcement

¹⁶ <https://www.consilium.europa.eu/en/press/press-releases/2018/12/04/money-laundering-council-adopts-conclusions-on-an-action-plan-for-enhanced-monitoring/>

¹⁷ Report from the Commission to the European Parliament and the Council assessing the framework for cooperation between Financial Intelligence Units COM(2019) 371.

¹⁸ Report from the Commission to the European Parliament and the on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the Member States on bank accounts COM(2019) 372.

authorities and Asset Recovery Offices as potential “end-users” of a possible interconnection system. For an interconnection to be achieved, a legislative instrument would be required.

IV. CONCLUSION

The fight against money laundering and terrorist financing is a continuous task underpinned by a regulatory framework that requires regular updates to keep pace with new developments. Much has been achieved to improve the existing framework, particularly through the legislative adjustments made in recent years. Yet there are major divergences in the application of the framework, presenting a structural problem in the Union’s capacity to prevent that the financial system is used for illegitimate purposes.

In an integrated internal market, fragmentation and failures in the application of the legal framework pose threats to the integrity of the Union’s financial system and the Union’s security more generally. This calls for continued determined, rapid and coherent action to ensure legislation on anti-money laundering /countering the financing of terrorism is fully implemented in a coherent and effective manner, notably by key competent authorities such as supervisors and Financial Intelligence Units. The Commission will continue to monitor the implementation of the updated legal framework and of the recommendations in its supranational risk assessment.

Whereas many risks and shortcomings have already been or will shortly be addressed thanks to the recent changes in the regulatory framework, some of the shortcomings identified are structural in their nature and have not yet been addressed.

The findings in the reports adopted today are intended to inform the debate about how the framework for anti-money laundering and countering the financing of terrorism could be further improved and to provide the basis for further discussions with relevant stakeholders.

Consideration could be given to further harmonising the anti-money laundering/countering the financing of terrorism rulebook. One option would be the transformation of the Anti-Money Laundering Directive into a Regulation, which would have the potential of setting a harmonised, directly applicable Union regulatory anti-money laundering framework. Different alternatives could also be envisaged in order to ensure high quality and consistent anti-money laundering supervision of the financial sector, which may require conferring specific anti-money laundering supervisory tasks to a Union body. Moreover, the assessments show a need for a stronger mechanism to coordinate and support cross-border cooperation and analysis by Financial Intelligence Units.