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| From:    | Presidency   |
| To:      | Permanent Representatives Committee/Council  |
| Subject: | Way forward with a view to strategic priorities on Anti-Money Laundering and Countering the Financing of Terrorism<br>- Presidency Issues Note |

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Delegations will find attached the above-mentioned Presidency issues note, with a view to the Council (ECOFIN) meeting of 10 October.

# Way forward with a view to strategic priorities on Anti-Money Laundering and Countering the Financing of Terrorism

## Presidency Issues Note

### Background

The fight against money laundering and terrorist financing (AML/CFT) is a high priority for the European Union. In December 2018, the Council set out an Action Plan with short-term non-legislative actions, which it continues to monitor on a regular basis. As part of that Action Plan, the Council called on the Commission to conduct a 'post-mortem' review of recent alleged money-laundering cases involving EU credit institutions. In July 2019, the Commission published a Communication and four reports, including the 'post-mortem', that provide an overview of current challenges (documents 11514/19, 11516/19, 11517/19, 11518/19, 11519/19).

### Outstanding issues related to anti-money laundering and countering the financing of terrorism

The relevant legal framework has been substantially enhanced during the last few years. Examples include the 5th Anti-Money Laundering Directive, the fifth Capital Requirements Directive and the review of the Regulations establishing the European Supervisory Authorities, which will be implemented in the course of 2020. Nevertheless, in the 'post-mortem' and in the FIU report, the Commission identified several issues likely to continue impeding the effectiveness of the European AML/CFT framework:

- Differentiated implementation, and wide national discretion in framing the obligations of banks and other obliged entities;
- Divergent tasks, competences and powers of the various authorities and bodies in charge of AML/CFT;
- Substantial differences in the nature / amount / use of sanctions across the Union;
- Unclear supervision/supervisory responsibilities of cross-border activities (group dimension largely underdeveloped);

- Insufficient cooperation between AML/CFT supervisors, prudential supervisors, Financial Intelligence Units (FIUs) and law enforcement authorities, including those in third countries;
- Insufficient coordination and support for FIUs in carrying out their general tasks, including joint analysis.

## Way forward

The Presidency considers AML/CFT a key area, and aims for the Council to set strategic priorities to guide the Commission with respect to longer-term actions in this area. This is also in line with the "*EU Strategic Agenda 2019-2024*" of the European Council (document EUCO 9/19), which calls for improved cooperation and information-sharing to fight terrorism and cross-border crime.

Going forward, the extent to which recent changes to the framework address the structural issues observed in the Commission report should be assessed. In addition, Member States need to consider the scope of possible future actions, the ways to further harmonise the legal framework, and possible initiatives for ensuring effective supervision throughout the Union, as well as seamless cooperation between the various authorities and enhanced cooperation between FIUs.

Accordingly, and with a view to inform Council Conclusions to be adopted on 5 December, the Presidency invites Ministers to discuss the following issues:

1. What would be **the most appropriate scope** of further reforms? Would this be only for the financial sector/some sub-sectors (e.g. banks, investment firms, payment institutions, insurers)? Is a separate AML/CFT approach necessary for the non-financial sector?
2. How should the ineffectiveness of the current AML/CFT framework stemming from the wide differences in national implementation be addressed? Which AML/CFT aspects would most benefit from **further harmonisation through a Regulation**?

3. How should issues related to inadequate supervision be addressed? Is the creation of a **new EU body** a valid way forward, or is any existing body the best option? Which tasks could be envisaged for such a body, and what would be the appropriate governance model?
  4. How could **effective cooperation** be ensured between the relevant (EU, MS and third countries') authorities and bodies involved in AML/CFT? Could issues related to cooperation with and between FIUs be addressed through the creation of a coordination and support mechanism?
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