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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 14 December 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

Subject: Amended Proposal for a Regulation of the European Parliament and of the
Council amending Regulation (EU) No 1093/2010 establishing a European
Supervisory Authority (European Banking Authority); Regulation (EU) No
1094/2010 establishing a European Supervisory Authority (European
Insurance and Occupational Pensions Authority); Regulation (EU) No
1095/2010 establishing a European Supervisory Authority (European
Securities and Markets Authority); Regulation (EU) No 345/2013 on
European venture capital funds; Regulation (EU) No 346/2013 on
European social entrepreneurship funds; Regulation (EU) No 600/2014 on
markets in financial instruments; Regulation (EU) 2015/760 on European
long-term investment funds; Regulation (EU) 2016/1011 on indices used as
benchmarks in financial instruments and financial contracts or to measure
the performance of investment funds; Regulation (EU) 2017/1129 on the
prospectus to be published when securities are offered to the public or
admitted to trading on a regulated market; and (EU) Directive 2015/849 on
the prevention of the use of the financial system for the purposes of
money-laundering or terrorist financing

- Opinion of the European Economic and Social Committee

Delegations will find attached the above mentioned opinion.

Encl.: [...]



European Economic and Social Committee

ECO/483

European System of Financial Supervision (ESFS) –
Amended proposal to fight money laundering

OPINION

European Economic and Social Committee

Amended Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

[COM(2018) 646 final – 2017/0230 (COD)]

Rapporteur: **Petr ZAHRADNÍK**

Referral	European Parliament, 04/10/2018 Council of the European Union, 12/11/2018
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted at plenary	12/12/2018
Plenary session No	539
Outcome of vote (for/against/abstentions)	121/0/4

1. Conclusions and recommendations

- 1.1 The EESC appreciates the agility with which the European Commission is responding to the problems that have become entrenched in banking and financial institutions and is taking further measures to stamp out money laundering and the financing of terrorism.
- 1.2 At the same time, the EESC thinks that, in addition to strengthening the coordination between supervisory authorities and streamlining procedures, operations should also be coordinated with other relevant parties to tackle this very dangerous problem effectively.
- 1.3 The EESC warns that technology and communications not only serve the development of innovative financial products for the benefit of depositors and investors, but are also a strong incentive for criminals engaged in money laundering and the financing of terrorism. This is one reason why it calls for the strategies adopted to target to the utmost the prevention of future risks.
- 1.4 The EESC underlines the increasing importance of this problem in relation to third countries, given the deterioration in geopolitical, security and political risks, and stresses the need for the EU to be fully prepared in order to eliminate practices of money laundering and financing of terrorism and to eliminate the abuse of its financial market and institutions.
- 1.5 The EESC recognises and respects the fact that the measures put forward in the legislative proposal, while important, are only component coordination, organisational and jurisdictional steps that must be followed by a further batch of measures if the matter is to be successfully addressed. At the same time, it agrees with the European Commission that, in order to make sure the path chosen is feasible and sustainable, it is preferable to move in stages so as to avoid significant disruptions to the stability and functioning of the existing system.
- 1.6 The EESC believes that under the new balance of powers between supervisory bodies, a balanced relationship should be found between the European Banking Authority (EBA), with its new, expanded powers, and national supervisory authorities, so that all parties involved make the best use of their capacities to achieve the desired solution to the problem.
- 1.7 The EESC stresses the importance of internal and external communication on money laundering and financing of terrorism to achieving the aim of the measures. The key element in internal communications is improving and protecting information streams between the supervisory bodies concerned; in the case of external communication, the public in question should be provided with information and made aware of the different ways this kind of crime may be presented, as a means of preventing and preparing for it.
- 1.8 The EESC wonders on what basis banking has been labelled the sector most likely to be exploited for money laundering, which has resulted in a stronger position and powers for the EBA rather than the EU's other two supervisory authorities.
- 1.9 The EESC would like to see a more detailed outline of the new relationships between the EBA and the other EU supervisory authorities, as well as the national and, especially, third-country supervisory

authorities, when it comes to coordination and synergies in the fight against dirty money and the financing of terrorism.

2. General context of the proposal and key facts

- 2.1 The EU has had a new system of financial market supervision in place since 2011, which has markedly improved financial market stability and risk limitation. It has led to a harmonisation of rules in the EU's financial markets and to a convergence in their supervision. However, the surge in technological and financial innovation since then has further shifted the spectrum of crime, which exploits the financial sector to support criminal acts and to launder their proceeds. Clearly, both of these types of activity are highly socially undesirable, but they also distort how financial markets work and their effectiveness, because their primary aim is not the maximising of profits based on the objective potential of assets and their value to evolve, but rather secrecy, concealment and lack of disclosure – behaviour which means that financial resources are not necessarily put to the best use.
- 2.2 The purpose of the proposed measures is therefore not merely to preclude or limit the means available for committing crime or legalising its proceedings, but also to keep financial institutions that are exploited by this crime healthy and to ensure their stability and safety for clients and investors. It will also limit the political and reputational risks to both individual Member States and the EU as a whole.
- 2.3 Given that financial markets are now multinational and inter-connected as never before, it is crucial to set up a system that fulfils its function in a cross-border context, since empirical evidence demonstrates that crime of this kind is increasingly committed on a cross-border basis and, among other things, involves people from third countries. For these efforts to be ultimately successful, then, it is not enough to prosecute this crime – however effectively – in one country alone. It is therefore very important to have effective synergies between national supervisory authorities covering money laundering or those covering the financial market and EU bodies operating in this area, as well as with third-country supervisory authorities.
- 2.4 The proposed measure examined in this opinion is but one of a packet of measures in the stated endeavour. For the endeavour to be considered a success, it is essential to have coordination with other elements that together form a systematic and consistent approach that will make it as difficult as possible for perpetrators to commit these crimes.
- 2.5 In particular, the proposal aims to:
- optimise the use of expertise and resources by centralising tasks at the European Banking Authority (EBA) related to preventing and combating money-laundering and the financing of terrorism for the whole financial market;
 - clarify the scope and substance of anti-money-laundering tasks entrusted to the European Banking Authority;
 - reinforce the tools for carrying out anti-money laundering tasks;
 - strengthen the coordination role of the European Banking Authority when it comes to international anti-money laundering issues.

3. General comments

- 3.1 The EESC believes that combating money laundering and the financing of terrorism is an increasingly important issue not only because of rapid technological change and financial innovations, but also because of the numerous recently identified cases in which the banking and financial systems in several EU Member States have been exploited for criminal ends. It is also important in these circumstances to flag up the heightened geopolitical risks, terrorism among them.
- 3.2 The EESC is concerned that the problem is further complicated by the fact that this crime, and the efforts to launder its proceeds through the financial sector, is not only taking place across borders within the EU, but also involves criminal activities extending into third countries. The EESC welcomes the fact that the European Commission's proposal actively seeks to address this.
- 3.3 The EESC notes in this regard that, although the review of the European System of Financial Supervision was addressed in 2017¹ and the EESC issued an opinion² on it, adopted in plenary on 15 February 2018, new insights and circumstances have prompted the need to amend the proposal by adding elements to make it more effective. Nevertheless, that earlier EESC opinion has lost none of its relevance. The EESC also welcomes the European Commission's agile response to a series of banking scandals in several EU countries which confirmed that criminals are capable of exploiting technology and means of communication as well as the current legislation, in the process revealing the weaknesses of the EU's money-laundering regime.
- 3.4 The EESC notes that the new elements in the proposal are mainly of a technical and organisational nature; however, broader and more comprehensive measures are needed to redress the current situation. The EESC adds that the proposal concerns a narrow range of matters relating to increasing the powers of the EBA and stepping up its coordination with national supervisory authorities in the fight against dirty money (AML supervisors) and in certain cases some control over them. On the other hand, it does not address the work of Financial Intelligence Units (FIUs). The proposal concerns the coordination of activities and procedures more generally, rather than what the fight against money laundering actually consists of.
- 3.5 The EESC emphatically warns that money laundering is not only a way to legalise the proceeds of activities considered as criminal and incompatible with the law, but also leads to a senseless allocation of resources in which the main aim of these operations is "not to be discovered" and to "legalise" the invested resources or transfer them to a place where further crime will be committed, rather than to achieve profit. At the same time, the EESC respects and highlights the fact that the amendment does not concern itself with analysing new trends or money laundering is occurring in the current circumstances. The proposal homes in on particular aspects of eliminating these shady practices, mainly bolstering the EBA's role in relation to European Supervisory Authorities in addressing the fight against money laundering and the financing of terrorism and improving its coordination and communication with national supervisory authorities in instances of combating money laundering, which are part of banking or financial market supervisory authorities.

¹ The original legislative proposal [COM \(2017\) 536 final](#), 20.9.2017. Its aim was to boost the capacity of the European Supervisory Authorities to ensure convergence and effective supervision of the financial market, but did not specifically address strengthening their remit in combating money laundering and the financing of terrorism.

² [OJ C 227, 28.6.2018, p. 63](#).

- 3.6 The EESC attaches fundamental importance here to a proper division of competences between the EBA and national authorities, in keeping with the subsidiarity principle. Strengthening EBA powers in addressing cross-border transactions is absolutely vital, legitimate and justified. The EESC would add, however, that when it comes to exclusively national cases, where the EBA is not obviously relevant, powers must be left in the hands of national authorities.
- 3.7 Given that combatting money laundering and the financing of terrorism is crucial to ensuring a healthy economic and financial environment throughout the EU, the EESC wonders whether it would not be a good idea to set up a dedicated organisation within the executive branch of the EU, such as a new directorate-general for this area. This is becoming an increasingly timely issue given that a new European Commission will be installed in the autumn of 2019.
- 3.8 The EESC also asks on what basis it is proposed that the EBA should play a key coordinating role in tackling this problem. Does this mean that the European Commission thinks the banking sector provides the widest scope in the EU with regard to money laundering and the funding of terrorism?
- 3.9 The EESC agrees that, in connection with the proposal, there must be effective communication on how the problem is being tackled. This communication should focus not only on effective communications between all the authorities involved (internal communication), but also on ensuring that the public arena (financial sector clients and the general public) is suitably informed.

4. **Specific comments**

- 4.1 The EESC calls for the proposal to set out very tangibly, in the form of an exhaustive remit for the whole financial market, the areas and relationships where the EBA will take a dominant position vis-à-vis other EU supervisory authorities in the fight against dirty money and financing of terrorism.
- 4.2 In the same vein, the EESC calls for further clarification on the conditions under which the EBA may carry out supervision of the procedures of national supervisory authorities or directly issue decisions to individual operators in the financial sector.
- 4.3 The EESC also takes a great interest in the nature of collaboration with third-country supervisory authorities.
- 4.4 The EESC also asks for clarification of how all the relevant information on money laundering and the financing of terrorism furnished by national authorities is to be centralised in the case of secret or top-secret sources and how these will be protected.

Brussels, 12 December 2018

Luca JAHIER

The president of the European Economic and Social Committee
