Council of the European Union

Brussels, 30 July 2021
(OR. en)

Interinstitutional File:
2021/0240 (COD)

10287/21
ADD 3

EF 225
ECOFIN 662
DROIPEN 120
ENFOPOL 257
CT 93
FISC 108
COTER 83
CODEC 1002

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 191 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the Anti-money laundering package: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU)2015/849 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Authority for Countering Money Laundering and Financing of Terrorism, amending Regulations (EU) No 1093/2010, (EU) 1094/2010 and (EU) 1095/2010 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets

Delegations will find attached document SWD(2021) 191 final.

Encl.: SWD(2021) 191 final

EUROPEAN
COMMISSION

Brussels, 20.7.2021
SWD(2021) 191 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying

the Anti-money laundering package:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU)2015/849

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Authority for Countering Money Laundering and Financing of Terrorism, amending Regulations (EU) No 1093/2010, (EU) 1094/2010 and (EU) 1095/2010

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets

{COM(2021) 420 final} - {SEC(2021) 391 final} - {SWD(2021) 190 final}

Executive Summary Sheet

Impact assessment on a package of Commission legislative proposals regarding Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT), including: Draft Regulation on AML/CFT; Draft amendment of Directive 2015/849 on AML/CFT; Draft Regulation creating an EU Authority for AML/CFT.

A. Need for action

Why? What is the problem being addressed?

Three problems are identified, despite recent revisions of the AML Directive: lack of clear and consistent rules, inconsistent supervision across the internal market, and insufficient coordination and exchange of information among Financial Intelligence Units (FIUs). Reference is made to the 2019 "post-mortem" report on recent money laundering (ML) cases in the EU (COM(1019)373final). Regarding rules, note is taken of the absence of limits on cash operations and the impacts this has on the mitigation of the high risk of ML deriving from large cash payments; the scope of entities covered by AML legislation and customer due diligence are among other highlighted areas where greater harmonisation could be beneficial. The current approach to third countries has limited effectiveness. Concerning supervision, enforcement varies in effectiveness across Member States, due to differences in resources and practices. FIUs currently lack common methods and harmonised templates which hinder joint analysis, resulting in suboptimal detection of transactions and activities potentially connected to ML/TF. The current approach to identify holders of bank account across borders is not effective.

What is this initiative expected to achieve?

The objective is to strengthen the preventive AML/CFT framework in the EU by removing the current loopholes that allow criminals to misuse the EU financial system to launder their illicit proceeds or permit terrorism financing of terrorist activities. This is expected as a result of action at both legislative and structural level:

- A clearer set of rules, including directly applicable provisions, will ensure more consistent application of the framework. This will provide for a more consistent approach to those entities that are required to apply AML/CFT rules across the EU, as well as to the measures that they must put in place, in addition to introducing a ceiling on cash payments in the EU.
- The creation of an EU AML Authority will improve supervision and support cooperation between FIUs.

What is the value added of action at the EU level?

The 2019 AML Package adopted by the Commission highlighted how criminals have been able to exploit the differences among Member State's AML/CFT regimes. The cross-border nature of much money laundering and terrorism financing (ML/TF) makes good cooperation between national supervisors and FIUs essential to prevent these crimes. Many entities subject to AML obligations have cross-border activities, and different approaches by national supervisors and FIUs hinder them in achieving optimal AML/CFT practices at group level. Greater EU-level coordination, including a component of direct EU supervision of the riskiest entities, is needed to deal with these cross-border issues and maximise the EU's financial system capacity to both prevent and detect ML/TF.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Regarding AML/CFT rules, apart from the baseline scenario (minimal changes in the current AML Directive), the options are directly applicable and more harmonised rules concerning only the entities covered by the legislation or also covering supervisors and FIUs. In the area of supervision, the baseline scenario consists of limited AML/CFT coordination being carried out by the European Banking Authority, as at present. An intermediate option is to create at EU level indirect supervision powers (an EU body to exercise oversight over national supervisors), and another option is to also create EU-level direct supervision over a number of the riskiest entities; a final option is EU direct supervision over all Obliged Entities. For FIUs, apart from the baseline of informal coordination among national FIUs, one option is to create an EU-level coordination and support mechanism for FIUs. A further option is to create a single EU FIU, replacing national FIUs.

The selected options are: a set of more harmonised AML/CFT rules, including a more harmonised set of entities subject to AML/CFT requirements, more harmonised requirements that they have to apply and a ceiling of €10 000 for cash payments in the EU; an EU AML/CFT supervisor, with indirect supervisory powers regarding all entities subject to AML/CFT requirements, and direct supervisory competence for a selection of the riskiest entities in the financial sector; an EU-level coordination and support mechanism for FIUs, integrated in the same EU Agency as the supervisor; interconnection of the national bank account registers and data retrieval systems.

Who supports which option?

The public consultation received 202 replies, 99% of which considered that further action is needed to combat ML/TF. Action at EU level was deemed the most effective option. All categories of stakeholders support more harmonised rules, including a more harmonised set of obliged entities (76%), more harmonised requirements they must apply (67%) and limits to cash payments (55%). As regards the EU supervisor, 55% of respondents prefer it to cover all entities, whether immediately or incrementally (with stakeholders outside the financial sector more reticent). Most stakeholders support broad competences for the FIU mechanism – from developing templates (57%) to assessing trends and risks (62%) to supporting joint analyses (57%).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Increased effectiveness and efficiency of the EU AML/CFT framework through more consistent application and enforcement is the principal benefit of the preferred options, with EU level structures to underpin, coordinate and support this. This will reduce criminals' options to exploit regulatory divergences across Member States and will ensure better protection of our financial system and economy. A more effective approach to third countries should reduce the burden on operators as rules to be applied become smarter and enhanced checks are reserved for risky situations only. An EU-wide interconnection of bank account registers would speed up access to bank account information and facilitate cross-border cooperation between FIUs and other competent authorities. The limitation of cash operations to payments under €10 000 will significantly deter money laundering while not affecting financial inclusion.

What are the costs of the preferred option (if any, otherwise main ones)?

The principal costs are the creation and running costs of a new EU AML/CFT Authority (a regulatory Agency). Supposing a staff level of 250 FTE at full operation, the annual cost would be of the order of €40 million. It is envisaged that over half of this cost can be met by levies on financial sector entities covered by the framework.

Private sector entities newly covered by the AML framework will also incur costs. These are mainly certain types of Virtual Asset Service Providers and crowdfunding platforms. These costs will mainly involve the recruitment and training of AML/CFT staff and obtaining appropriate IT applications. Certain entities covered by the AML/CFT framework will incur the cost of contributions to the AML Authority. The exact cost per entity will depend on the number of entities which must contribute (this will be determined in a subsequent delegated act).

The interconnection of centralised bank account registries and data retrieval systems will generate costs both in terms of establishing the system and its maintenance. Based on the costs incurred in relation to other EU systems, the costs of the future interconnection platform are tentatively estimated at approximately €2 000 000.

How will businesses, SMEs and micro-enterprises be affected?

Financial institutions which are active cross-border will experience benefits from clearer and more consistent rules across the EU, resulting in reduction of compliance costs. In addition, they will encounter more harmonised practices and better communication between national supervisors and FIUs, with some will only having to deal with a single EU supervisor. Other Obliged Entities should experience improved quality of supervision and better feedback from FIUs. SMEs covered by the AML framework are essentially non-financial, including notaries, real estate agents, accountants and others. Currently they play a limited role in ML/TF detection. Their awareness of ML/TF will be improved, alongside the level of surveillance to ensure that they apply AML/CFT measures. As a result of this initiative, the number of suspicious transaction that they report should increase.

Will there be significant impacts on national budgets and administrations?

No such negative impacts are envisaged. There may be some savings for some national supervisors which currently supervise entities which will be transferred to supervision by an EU supervisor.

Will there be other significant impacts?

The main expected significant impact is a reduction in money laundering and terrorism financing in the EU. The total amount of undetected ML/TF has been estimated by Europol at well over €100 billion per year. An improved preventive framework can help to reduce this figure by reducing the options available to criminals. This has the potential to bring major social welfare benefits. Moreover, improved detection will positively impact the cases that are investigated and prosecuted, with higher chances to recover assets for the benefit of all.

D. Follow up

When will the policy be reviewed?

A review clause in the future AML Regulation will require evaluation within 5 years of application. The AML Authority will be reviewed at the same time, if it has been in operation at least two years by that time.