



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0239 (COD)**

Brussels, 18 October 2023

WK 13393/2023 INIT

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WORKING DOCUMENT

From: Presidency
To: Financial Services Attachés
Working Party on Financial Services and the Banking Union (AML)

N° Cion doc.: 10286/21 + ADD 1

Subject: AMLR: VTC working party 20.10.23
- EP discussion paper on Offshore financial centers (OFCs)

WK 13393/2023 INIT

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Offshore financial centers (OFCs)

Line 522b

1. Context

In its negotiating mandate, the Parliament introduced a new Article requiring obliged entities to apply certain risk-based elements of enhanced due diligence towards companies established in offshore financial centers (OFCs), as defined according to the criteria to be specified by AMLA by means of implementing technical standards.

Recent money laundering scandals, as exposed by series of investigations from Pandora Papers, Paradise Papers, Bahamas Leaks, Panama Papers and Offshore Leaks, have shown the key role of offshore financial centers in facilitating money laundering.

In the view of the Parliament, from an anti-money laundering perspective, it is important that the link between OFCs and money laundering is clearly recognized in the EU legal framework as a situation of higher risk which requires additional scrutiny.

According to the Parliament mandate, the inclusion of a country in the list would not trigger any countermeasure (such as the limitation of business relationship or systematic reporting) which may be, on the contrary, required under third country policy rules.

It would instead trigger some specific elements of enhanced due diligence measures, on a risk basis, such as gathering information on the nature of the business, approval of senior management, understanding the source of funds (to detect any illicit financial flows) and continuous monitoring.

The provisions would only apply to legal entities and arrangements, not to natural persons based in the offshore centers.

The Parliament mandate empowers AMLA to specify the criteria for the identification of offshore financial centers with the aim of developing a common definition at EU level.

Various lists and definitions of offshore financial centers have in fact been developed at international and European level (IMF, BIS, FSB, Eurostat). Such lists have a different scope compared to the FATF blacklist/grey list although they may overlap in specific cases. An offshore financial center may indeed not qualify per se as a high-risk jurisdiction for AML/CFT purposes. Nevertheless, companies linked with offshore financial centers often pose higher risks of money laundering and other illegal activities.

2. Technical discussions

During technical discussions, both Commission and Presidency expressed reservations about the Parliament's proposal to require obliged entities to apply enhanced due diligence towards companies located in offshore financial centers and questioned its added value.

In particular, concerns included the risk that such new list would overlap with the EU's list of non-cooperative jurisdictions for tax purposes and include countries not necessarily posing a ML/TF threat and the impact on resources of adding another task to AMLA.

Furthermore, the Parliament pointed out there is a need to develop a common understanding of offshore financial centers in order to better address the ML/TF risks associated with those.

Both Commission and the Presidency have shown openness to consider a compromise integrating the risks posed by offshore financial centers in the risk factors.

3. Compromise proposal

Taking into account the technical discussions, the following compromise solution could be considered:

- drop its proposal to include a specific Article introducing specific EDD obligations with respect to offshore financial centers;
- drop its proposal to develop a list of offshore financial centers by means of implementing acts by AMLA;
- accept instead to address the money laundering risks posed by offshore financial centers in the risk factors of Annex III through the integration of certain elements associated with OFCs, such as indicators of financial secrecy, as provided in the Parliament mandate.