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European Commission Proposes European AML Supervisor and Single Rulebook

JONES
DAY

COMMENTARY
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European Commission Proposes European AML Supervisor and Single Rulebook

IN SHORT

The Situation: The European Commission issued an Action Plan on Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT") in response to recent money laundering scandals and concerns of an increase in crime due to COVID-19.

The Result: The Action Plan will ensure harmonization of EU AML/CFT laws, implement an EU-level supervising authority, and promote the sharing of information between competent authorities and Financial Intelligence Units.

Looking Ahead: The Action Plan could result in increased authority of the European Banking Authority ("EBA"), if the Commission decides to designate them as the EU-level entity. The Action Plan will also likely lead to enhanced scrutiny of cross-border transactions by law enforcement authorities and Financial Intelligence Units.

On May 7, 2020, the European Commission issued a communication concerning an Action Plan directed to intensify the fight against AML/CFT.

The European Commission "sets out the measures it will take over the next 12 months to better enforce, supervise and coordinate EU rules in this area" (AML/CFT).

In a nutshell, the aim of the Commission is to put in place a system of harmonised standards and to establish an EU-level supervisory entity working in close cooperation with the relevant local supervisory authorities. The Action Plan is intended to implement the EU-level supervisory entity in the first quarter of 2021.

In this respect, the European Commission will work with all its partners to implement a centralized control system with the aim (*inter alia*) to:

- Supervise suspicious cross-border transactions either by establishing a new EU supervising entity or by affording additional "authority" to the EBA; and
- Adopt a uniform and more transparent methodology for identifying countries with inadequate AML/CFT measures in place.

The Action Plan outlines how the Commission intends to deliver on these objectives, building on six pillars:

- Ensuring the effective implementation of the existing EU AML/CFT framework;
- Establishing an EU single rule book on AML/CFT;
- Bringing about EU level AML/CFT supervision;
- Establishing a support and cooperation mechanism for Financial Intelligence Units ("FIUs");
- Enforcing Union-level criminal law provisions and information exchange; and
- Strengthening the international dimension of the EU AML/CFT framework.



The Commission will also be monitoring Member States' capacity to fight money laundering and terrorist financing and provide country-specific recommendations to improve any shortcomings.



Ensuring the Effective Implementation of the Existing EU AML/CFT Framework: The Commission is ensuring AML/CFT compliance with the 5AMLD through infringement proceedings against Member States who have failed to implement it. They will also be monitoring Member States' capacity to fight money laundering and terrorist financing and provide country-specific recommendations to improve any shortcomings. The EBA will also assist in these efforts through its expanded powers to lead AML/CFT efforts of all EU financial services providers and competent authorities.

Establishing an EU Single Rule Book on AML/CFT: The many divergences across Member States of the implementation of the current framework poses a risk to effective AML/CFT efforts. Therefore, the Commission is recommending that EU AML/CFT legislation become "more granular, more precise and less subject to diverging implementations." These harmonization efforts also include addressing risks from cyber-related financial crime and fraud. In addition, the Commission suggests having concrete obligations that require prudential supervisors to share information with their AML/CFT counterparts.

Bringing About EU-Level AML/CFT Supervision: The EU-level entity will further the Commission's efforts to promote harmonization and prevent supervisory fragmentation. The functions of the EU supervisor will include the ability to review the internal policies and controls of supervised entities to ensure effective implementation. The scope of this entity could include supervision both within and outside the financial sector, but may be limited to only monitoring risks in financial institutions. The Commission is proposing that this authority either be given to an existing agency, likely the EBA, or to a newly created EU AML supervisory body.

Establishing a Coordination and Support Mechanism for FIUs: To address weaknesses in cooperation between FIUs and competent authorities, this mechanism should identify suspicious transactions with a cross-border dimension and identifying factors relevant in assessing money laundering risks at a national and supranational level. The Commission expects this mechanism to be administered by either an existing EU agency or through the creation of a new, dedicated body.

Enforcing Union-Level Criminal Law Provisions and Information Exchange: The Commission believes the recently-established European Economic and Financial Crimes Centre (EFECC) will serve as a natural counterpart to the EU support and coordination mechanism for FIUs. They also encourage the role of public-private partnerships (PPPs) in sharing information between law enforcement authorities, FIUs, and the private sector. Since such information may include personal data, it is understood that "any sharing of information that includes personal data must fully comply with data protection legislation and respect the mandates of the authorities involve." In this respect the "Commission will consider the possibility of requesting the European Data Protection Board to issue an opinion."

Strengthening the International Dimension of the AML/CFT Framework: The Commission will identify countries that pose a specific threat to the EU's financial system using an autonomous methodology that will work with the Financial Action Task Force listing process. This process will serve to identify previously undiscovered risks posed by third countries. The Commission is also developing a technical facility to provide technical assistance to third countries to raise their capacity and address weaknesses in their domestic AML/CFT frameworks.

THREE KEY TAKEAWAYS

1. Divergences and weaknesses in the current AML/CFT framework have led the EU Commission to implement a more comprehensive AML/CFT policy, aimed at addressing specific threats, risks, and vulnerabilities currently facing the EU.



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- 2. The Action Plan addresses how the Commission intends to accomplish these objectives, building on six pillars. These include a harmonized rulebook and an EU-level supervisor. The Action Plan also implements a coordination mechanism for FIUs to enhance their effectiveness and communications with national authorities.
- 3. The Action Plan will result in legislative changes to the current AML/CFT framework. The Commission is currently going through an impact assessment to ensure the changes comport with fundamental rights, especially the right to protect personal data. The Commission is assessing different options in terms of legislative changes and expects them to be adopted through Q1 2021.



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