

The European Commission Publishes its Ambitious Action Plan on Anti-Money Laundering

June 12, 2020

On May 7, 2020 the EU Commission published an ambitious and multi-faceted action plan (the “Action Plan”) to further strengthen the fight against money-laundering and terrorist financing (“AML-CFT”) in Europe. Building on the existing regulatory framework, as well as guidance issued by the Financial Action Task Force (“FATF”), the Action Plan consists of six pillars that seek to ensure greater harmonization between Member States and a more effective approach to enforcement, as well as a revised methodology for identifying countries that present weaknesses in their national AML-CFT regimes (including an updated list of such countries that is more closely aligned with the lists published by the FATF).

Building on communications issued in July 2019, including a report¹ noting several weaknesses following allegations of money-laundering within certain European banks, the Commission had previously indicated the need for greater harmonization in the European AML-CFT framework. The Commission also highlights in its observations the greater need for coordination as a result of the COVID-19 outbreak, echoed by the European Banking Authority (“EBA”) in its statement on actions to mitigate financial crime in the current context.² In light of these developments, the Commission has indicated 2021 as an indicative timeframe for implementing its Action Plan, as discussed further below. The Commission welcomes feedback on the related public consultation until July 29, 2020.

The Action Plan’s Six Pillars

1. *Effective application of EU rules:* In the wake of infringement proceedings against certain Member States for failing to appropriately transpose the Fourth AML Directive, the Commission notes the importance of ensuring that the EU-wide AML-CFT rules are appropriately transposed and applied by Member States, including with respect to central bank account mechanisms and beneficial ownership registers. The Commission highlights the strengthened EBA mandate on leading, coordinating and monitoring AML-CFT matters,³ noting that the EBA has already started carrying out implementation reviews.

¹ See European Commission, *Report from the commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions*, available [here](#).

² See European Banking Authority, *EBA statement on actions to mitigate financial crime risks in the COVID-19 pandemic*, available [here](#).

³ See Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 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 600/2014 on markets in financial instruments, Regulation (EU) 2015/2365 on the transparency of financial transactions, and Regulation (EU) 2015/2366 on the transparency of financial transactions, [clearlygottlieb.com](#)



2. *Single EU rulebook*: Under the Action Plan, the Commission proposes to issue by the first quarter of 2021 a legislative proposal on developing a single rulebook, identifying areas to be developed into a directive, setting out new areas to be regulated at the EU-level and identifying amendments necessary in respect of other existing legislation. The Commission has indicated that this is likely to include, at a minimum, customer due diligence requirements, internal controls, reporting obligations as well as the provisions on beneficial ownership registers and central bank account mechanism. The Commission also highlights that EU legislation must take into account developments in technology, including digital identification for remote customer identification.
3. *EU-level supervision*: Citing significant variations in resources devoted to AML-CFT supervision among Member States, the Commission highlights the importance of bringing about an EU-level supervisory system that contributes to the smooth functioning of the Single Market and the Banking Union as well as the particular importance of ensuring high-quality supervision in cross-border cases. In the Action Plan, the Commission outlines several possible approaches for creating an EU supervisory and will issue a proposal in the first quarter of 2021 based on a thorough impact assessment of options regarding functions, scope and structure.
4. *Coordination and support mechanisms for Member State Financial Intelligence Units*: Noting certain weaknesses in Financial Intelligence Units' ("FIUs") application of rules as well as challenges in the functioning and hosting of FIU.net, the EU-wide system for information exchange among FIUs, the Commission proposes to issue proposals for an EU-wide coordination and support mechanism for FIUs in the first quarter of 2021 and expects to take over the management of FIU.net during the fourth quarter of 2020.
5. *Enforcing EU-level criminal law provisions and information exchange*: The Commission notes that cooperation between judicial and other law enforcement authorities is critical to the fight against economic and financial crime. In this respect, the European Economic and Financial Crimes Centre ("EFECC") has been established and is expected to go into operation during the course of 2020. Separately, with respect to public-private partnerships, the Commission expects to issue guidance during the first quarter of 2021, including consideration of data protection aspects and enhanced domestic and cross-border information exchange.
6. *The EU's global role*: The Commission notes its implication in the work of the FATF in shaping international AML-CFT standards, and its commitment to continue to play an important role in this area, particularly on beneficial ownership.

Revised Country Methodology and Updated List

In connection with the Action Plan, the Commission also issued a revised methodology⁴ on assessing high-risk third countries, as well as a modification by delegated act of the list of countries that are deemed to present strategic weaknesses from an AML-CFT perspective.⁵ Based on their written high-level political commitments and development of action plans in coordination with the FATF, Bosnia-Herzegovina, Guyana,

2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, available [here](#).

⁴ See European Commission, Commission Staff Working Document: Methodology for identifying high-risk third countries under Directive (EU) 2015/849, available [here](#).

⁵ See European Commission, Commission Delegated Regulation (EU) .../... of 7.5.2020 amending Delegated Regulation (EU) 2016/1675, available [here](#).

Lao PDR, Ethiopia, Sri Lanka and Tunisia have been removed from this list. However, due to strategic deficiencies, 12 new countries were added to the list, including The Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar, Nicaragua, Panama and Zimbabwe.

Brexit Considerations

There has not yet been any official reaction from the U.K. authorities as to the Commission's Action Plan, which is not expected to apply to the U.K. given that the likely implementation timeframe falls after the currently scheduled end-date of the Brexit transition period. Until the end of the transition, the existing EU AML-CFT framework applies within the U.K.

After the end of the transition period, the U.K. will immediately "onshore" the existing EU legislation, following which the U.K. parliament will be able to decide which elements of that law to keep, amend or repeal, including, therefore, whether or not to adopt any elements of the Action Plan. The U.K. government has already indicated its intention to strengthen the current framework, by progressing the Registration of Overseas Entities Bill, which follows a political commitment made at the 2016 Anti-Corruption Summit hosted by the U.K. authorities and forms a key part of a range of measures aimed at increasing transparency in ownership within the U.K. property market, particularly in London.

Furthermore, the political declaration by the U.K. and EU on their post-Brexit relationship notes the importance of achieving strong cooperation on AML-CFT law enforcement matters, as well as the intention to go beyond FATF standards on matters such as beneficial ownership and virtual currencies. Both sides have included AML-CFT within their drafts of their proposed security partnership. While it remains uncertain how Brexit will affect cooperation on law enforcement and judicial matters in the long-term, it seems clear that strengthening AML-CFT regulation and enforcement remains a strategic priority for both the EU and the U.K.

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