Prevention of the use of the financial system for the purposes of money laundering or terrorist financing

2013/0025(COD) - 05/02/2013 - Legislative proposal

PURPOSE: protecting the financial system against money laundering and terrorist financing through measures on prevention, investigation, and detection.

PROPOSED ACT: Directive of the European Parliament and of the Council.

PARLIAMENT'S ROLE : Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council

BACKGROUND: Money laundering and terrorism financing create thus a high risk to the integrity, proper functioning, reputation and stability of the financial system. The changing nature of money laundering and terrorist financing threats requires a permanent adaptation of the legal framework to counter such threats.

At EU level, Directive 2005/60/EC (the **Third Anti Money Laundering Directive or AMLD**) sets out the framework designed to protect financial institutions against the risks of money laundering and terrorist financing. The EU rules are to a large extent based on international standards adopted by the Financial Action Task Force (FATF).

At international level, the FATF has undertaken a fundamental review of international standards and adopted a new set of Recommendations in February 2012. In parallel to the international process, the European Commission has been undertaking its own review of the European framework. The **proposed revision of the Directive is complementary to the revised FATF Recommendations,** which represent a substantial strengthening of the anti-money laundering and combating terrorist financing framework.

IMPACT ASSESSMENT: the Commission has undertaken an impact assessment, where it analysed the potential consequences of money laundering and terrorism financing. It also analysed the impact of the legislative proposals on fundamental rights.

In order to rectify the problems identified, the assessment concluded that the following operational objectives must be achieved:

- ensure **consistency between national rules** and, where appropriate, flexibility in their implementation by strengthening and clarifying current requirements;
- ensure that the rules are **risk-focused** and adjusted to address new emerging threats, by strengthening and clarifying current requirements;
- ensure that the EU approach is **consistent with the approach followed at international level** by extending the scope of application, and strengthening and clarifying the current requirements.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal incorporates and repeals Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC1, thus improving the comprehensibility and accessibility of the anti-money laundering legislative framework.

The Commission proposes to make **the following amendments to the Third Anti-Money Laundering Directive:**

- broaden the scope of the Directive beyond casinos to cover the **gambling services involving wagering a stake with monetary value in games of chance;**
- include an explicit reference to **tax crimes as a predicate offence**;
- reduce the scope of the Directive and customer due diligence thresholds for traders in high value goods **from EUR 15 000 to EUR 7 500 for cash transactions**;
- introduce a requirement for **Member States to carry out a risk assessment at national level** and take measures to mitigate risks;
- Member States are required to ensure that **enhanced due diligence** must be conducted in certain situations of high risk, while allowing them to permit **simplified due diligence** in lower risk situations;
- require all companies to hold **information on their beneficial owners**;
- maintain the approach which requires identification of the beneficial owner from a **25% ownership threshold**, but clarify what the "25% threshold" refers to;
- introduce new rules clarifying that **branches and subsidiaries** situated in Member States other than the head office must apply host state anti-money laundering rules and reinforce cooperation arrangements between home and host supervisors;
- **remove the provisions relating to positive "equivalence**" with third countries, as the use of exemptions on the grounds of purely geographical factors is less relevant;
- provide a range of **sanctions** that Member States should ensure are available for systematic breaches of key requirements of the Directive;
- bring in the provisions of Council Decision 2000/642/JHA **concerning arrangements for cooperation between financial intelligence units of Member States** in respect of exchanging information and also extend and strengthen cooperation;
- **entrust certain tasks to the European Supervisory Authorities** (EBA, EIOPA and ESMA): (i) carry out an assessment and provide an opinion on money laundering and terrorist financing risks; (ii) produce guidance for financial institutions on what factors should be taken into account when applying simplified customer due diligence and enhanced customer due diligence and when applying a risk-based approach to supervision;
- introduce provisions to clarify the interaction between anti-money laundering/combating terrorist financing and **data protection requirements**;
- introduce new requirements for the treatment of domestic **politically exposed persons** (PEPs) and PEPs working in international organisations.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Union budget.