

**Towards an Intelligence-Led  
Supervisory and Enforcement  
Regime for Anti-Money  
Laundering across the  
European Union**

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Beneath the headlines of the pandemic response, the European Commission (EC) has outlined one of the most profound and ambitious overhauls to the global framework for fighting financial crime. The EC **Action Plan** for a comprehensive European Union (EU) policy on preventing money laundering and terrorist financing spans a 27-member nation market, the world's second largest economy, home to some 450 million consumers.

### Key takeaways

- Stakeholders may want to consider contributing to the EC consultation process and monitoring public contributions. This includes newly regulated sectors and entities under the EU's Fifth Anti-Money Laundering Directive (5AMLD) as well as virtual asset service providers not covered so far.
- Obligated entities and other participants should be prepared for enhanced scrutiny of their money laundering and terrorism financing (ML/TF) risk management and compliance programmes by national competent authorities as well as direct supervision by a potential EU-level supervisor(s).
  - This will require reviewing and updating group-wide policies and procedures to comply with current EU standards and amendments to a single EU rulebook. Parts of the rulebook may take the form of EU regulation and become immediately applicable and enforceable in all Member States. Meanwhile, the Sixth Anti-Money Laundering Directive (6AMLD) will establish corporate criminal liability for the lack of oversight and control of key ML/TF risks.
  - Suspicious transaction reporting may be enhanced to include more structured data as well as enhanced feedback and analysis from financial intelligence units (FIUs) to obligated entities, including for purposes of adjusting their preventive measures.
  - In keeping with European Commission Delegated Regulation (EU) 2019/758, a single anti-money laundering (AML) and countering the financing of terrorism (CFT) rulebook across the EU can be expected to enhance the measures that credit and financial institutions will need to apply in third countries where they have established a branch or a majority-owned subsidiary. Such measures will be evaluated in the context of group-wide policies and procedures by national competent authorities, European supervisory authorities and a potential EU-level supervisor. A revised methodology for the

identification of high-risk countries was published alongside the Action Plan.

- Stakeholders should prepare for opportunities to participate in collaborative forums, including formalized national, sectoral and/or thematic partnerships spanning the public and private sectors.
- EU Member States should also prepare for infringement proceedings and heightened scrutiny of national AML/CFT frameworks and their effectiveness. Supplementing the FATF's mutual evaluation process, an EU-level supervisor will place heightened emphasis on effectiveness and outcomes, not merely technical compliance.

### Introduction

On 7 May 2020, the EC outlined a series of prospective reforms to improve the framework for AML/CFT across the EU. The six-point Action Plan aims to "close the door on dirty money" through increased harmonization as well as better coordination, supervision and enforcement of the EU's rules, consistent with the risk-based approach as enshrined both in EU law and international standards.

The Action Plan contributes to the global consensus that the current framework for fighting financial crime is not-fit-for-purpose, notably in addressing the threats of the 21st century. Deloitte and the Institute of International Finance (IIF) outlined elements of this consensus in [The global framework for fighting financial crime](#) (October 2019). Despite tens of billions of dollars invested in AML/CFT efforts worldwide, illicit financial flows are estimated to total between 715 billion and 1.87 trillion euros globally according to the United Nations Office on Drugs and Crime (UNODC). Europol, the EU law enforcement agency, estimates that suspicious financial activity could account for as much as 0.7-1.28% of the EU's GDP.

To strengthen the effectiveness of the financial crime risk management framework, industry associations, think tanks, and law enforcement networks have issued growing calls for greater regulatory clarity and consistency as well as enhanced collaboration, including through increased information-sharing. Based on input from multiple stakeholders and research, Deloitte and the Institute of International Finance recently published detailed and achievable recommendations for long-term systemic reform through a combination of regulatory reforms, increased international and public-private cooperation, and adoption of technology.

To date, the EC has primarily sought to strengthen the European Union's AM/CFT framework through legislative measures. These include the 5AMLD, which expanded the scope of obligated entities; an upgraded mandate for the European Banking Authority; and new rules on access to financial information. The 6AMLD, which will take effect in December 2020, aims to harmonise the definition of predicate offences, including tax evasion, cybercrime and environmental crime, and strengthen penalties, including a new high bar for corporate criminal liability for the failure to prevent money laundering.

Despite these legislative reinforcements, a series of scandals has brought to light the uneven application of the EU's standards and the bloc's vulnerabilities to illicit finance. The EC's first priority, therefore, is addressing major divergences in the application and enforcement of existing rules. However, its Action Plan also recognizes a number of institutional and operational shortcomings, including significant variations in human and technical resources devoted to AML/CFT institutional supervision. Taken together, these divergences and capability gaps undermine the collective intelligence of the entire system to detect emergent and shifting risks and coordinate responses, including the enhanced vigilance of so-called gatekeepers (i.e. banks and other obligated entities).

### The six pillars of the European Commission's action plan

The EC has announced an ambitious and multi-faceted Action Plan to strengthen the EU anti-money laundering system through the following concrete measures:

- **Effective implementation of the existing AML/CFT framework:** A key priority of the EC is ensuring that EU AML/CFT rules are rigorously and

effectively implemented by EU Member States, competent authorities and obliged entities. To that end, the Action Plan includes continued infringement proceedings against Member States that have failed to fully transpose EC directives. The European Banking Authority (EBA) will play a prominent role under this pillar, consistent with its broader mandate to lead, coordinate and monitor AML/CFT supervision of financial services and competent authorities. This includes a series of implementation reviews throughout 2020. The EBA has also announced plans to provide training for competent authorities on effective AML/CFT supervisory practices. These reviews will feed into an EC report on the effective application of its AML/CFT directives that is due in January 2022, and every three years thereafter.

- **A single EU AML/CFT rulebook:** To provide a unified regulatory framework for AML/CFT, the EC intends to provide a harmonised rulebook - more granular, more precise and less subject to diverging interpretation and application, including through regulation with direct effect across the EU. At a minimum, the Action Plan indicates that the rulebook will include provisions setting out obliged entities, customer due diligence requirements, internal controls, reporting obligations, as well as the provisions on beneficial ownership registers and central bank account mechanisms. The Action Plan also contemplates a more harmonized approach to the identification of politically exposed persons.

The EC recognizes the need for the rulebook to remain flexible in order to address emerging risks, including products and services it regards as potentially vulnerable to ML/TF risks as well as increased cyber-related crime and innovations, such as the development of digital identity.

- **EU-level AML/CFT supervision:** The EC seeks to reduce supervisory fragmentation, ensure harmonised application and effective enforcement of AML/CFT rules, offer support for on-the-spot supervisory activities and ensure a constant flow of information on significant identified shortcomings. The Action Plan contemplates a new EU body with direct AML/CFT supervisory responsibilities and tasks over certain obliged entities for which it could have exclusive or joint responsibility, including the ability to review the internal policies, procedures and controls as well as their effective implementation by supervised entities, along with reviewing documentation related to customers and transactions.

The Action Plan outlines a few options, both for the scope of supervision and the appropriate supervisory body, but the objective is to provide supra-national prioritization consistent with the risk-based approach to AML/CFT supervision. The EC intends to table proposals for an EU-level AML/CFT supervisor in Q1 2021, based on an impact assessment of options regarding its functions, scope and structure.

• **Coordination and support for Member State**

**Financial Intelligence Units:** The Action Plan recognizes the opportunity to enhance information sharing not only between and across competent authorities, both domestically and across borders, but also with private sector participants. The EC identifies a number of weaknesses that undermine the efficiency and effectiveness of government financial intelligence units (FIUs). This includes insufficient human and financial resources, including for investments in technology. Cooperation with domestic and EU partners is also limited, notably on cross-border investigations and the identification of trends. Together, these weaken the virtuous circle that would help obligated entities to strengthen their systems and controls.

To bridge these gaps, the Action Plan contemplates a coordination and support mechanism through an existing EU agency or by a new, dedicated body. The EC will table proposals to establish an EU coordination and support mechanism for FIUs in Q1 2021, based on a thorough impact assessment of options regarding its role and structure. The Commission will take over the management of the FIU.net in Q4 2020.

• **Enforcing EU-level criminal law provisions and information exchange:**

Recent EC measures have closed loopholes in the definition of financial crime, enhanced judicial and police cooperation, and facilitated the freezing and recovery of asset. These include 6AMLD and the recent launch of the European Financial and Economic Crime Centre (EFECC) within Europol, which aims to concentrate financial intelligence and economic crime capabilities. The new Centre aims to enhance the operational support provided to the EU Member States and EU bodies in the fields of financial and economic crime and promote the systematic use of financial investigations.

Other measures include the EC's funding of the Anti-Money Laundering Operational Network (AMON), which, together with Eurojust, facilitates cross-border financial investigation and prosecutions. The Action Plan calls for EU Member States to join AMON and for its budget to be increased.

The Action Plan points to public-private partnerships (PPPs) as growing feature of intelligence-led financial crime system. Comprising law enforcement authorities, FIUs and the private sector, these partnerships recognise the overlap between all stakeholders' interests in fighting financial crime, and the opportunity to enhance collective intelligence. Regulatory clarity regarding the role of PPPs will encourage participation and help to increase the overall effectiveness of the regulatory framework. To that end, the EC will issue guidance on PPPs by Q1 2021. As regards data protection aspects of information sharing within PPPs, the EC may ask the European Data Protection Board to issue an opinion. Options to strengthen the AMON network and to enhance domestic and cross-border information exchange among all competent authorities will also be actively considered.

• **A stronger EU in the world:** The EU has endorsed the new mandate for FATF and indicated its intention to play a prominent role in setting global standards, including raising them to the level of the EU's own standards in key areas, such as transparency of beneficial ownership. To be able to do so, the EC finds it essential to speak with one voice in the FATF. This might be achieved by giving the Commission the task to represent the European Union at FATF meetings. The EC will continue to implement an autonomous policy and approach to assessing countries with strategic deficiencies in their AML/CFT regimes. A revised assessment methodology and list of high-risk countries were published alongside the Action Plan. The Action Plan anticipates that an EU-level supervisor, together with a coordinating and support function for FIUs, could contribute to mitigating risks from third countries. The Action Plan envisions more granular and risk-based measures to address these risks, which could be complemented by a transactions-based approach.

**Our perspective**

The EU's AML/CFT standards exceed international standards and are far-reaching. The EC clearly intends for these standards be applied uniformly across the EU single market, at a minimum. The Action Plan contains some important and trending proposals, although it remains to be seen how many survive the normal EU legislative process intact, which involves inter-institutional debate and negotiation between the Commission, European Parliament and Council (of EU Member States). Some Member States, for example, may be concerned about the potential of the proposals to lead to a decline of influence from the member states within FATF and to a de facto transfer of responsibilities in fighting and investigating financial crime from a national to EU level.

A “single rulebook” has been the backbone of prudential supervision and transparency across the EU since 2009. The EC intends to instill a similar culture for AML/CFT, and equip itself with a similar degree of flexibility. Uniform and binding technical standards for AML/CFT are expected to limit the scope for regulatory arbitrage by raising the bar for competent authorities as well as obligated entities. Consistent standards will help to reduce duplicative compliance processes, notably in information gathering and sharing as well as regulatory reporting.

Reinforcement to the EU AML/CFT architecture also includes a revised methodology for assessing high-risk third countries and a proposed approach to harmonise the identification of politically exposed persons. The EU will, in principle, also list jurisdictions that FATF has determined to have strategic deficiencies as high-risk. Specific EU requirements may “top up” the existing FATF action plans for these jurisdictions. Additional jurisdictions may be subject to the EU’s autonomous assessment of strategic deficiencies, including based on input from competent authorities (law enforcement, intelligence services, and FIUs). The Action Plan proposed to resolve nuances between the definition of politically exposed persons (PEPs) and Member State compilations of prominent public functions.

Recognising the importance of striking the right balance, the EC intends to shift the focus of AML/CFT supervision from technical compliance to enhancing effectiveness and outcomes. This includes reinforcing competent authorities’ understanding of ML/TF risks and the application of a risk-based approach to AML/CFT supervision, including adjusting the frequency and intensity of onsite and offsite inspections as well as applying sufficiently dissuasive corrective measures.

Consistent with the shift in focus, for example, the EBA’s recent 10-point action related to dividend arbitrage trading schemes (“Cum-Ex/Cum-Cum”) is notable. Through this, the EBA announced changes to a series of AML/CFT guidelines and expects institutions, competent AML/CFT and prudential authorities to take a holistic view of the risks highlighted by dividend arbitrage trading cases. It also recommended cooperation and information exchange between all relevant authorities.

Beyond regulatory harmonisation and increased supervision and enforcement, including raising international standards, the EC Action Plan recognises the opportunity for wider improvements. Data-driven partnerships are at the heart of emerging architecture for fighting and detecting financial

crime. Despite pioneering models, such as the UK Joint Money Laundering Intelligence Taskforce (JMLIT), the Netherlands’ Terrorist Financing Taskforce (TF Taskforce) and Europol’s Financial Intelligence Public Private Partnership (EFIPPP), progress has been slow across the EU, but recently picking up momentum. Germany created the national Anti-Financial Crime Alliance (AFCA) in 2019. France, Ireland, Italy and Spain made commitments to develop public-private financial information-sharing partnerships at the London Anti-Corruption Summit in May 2016.

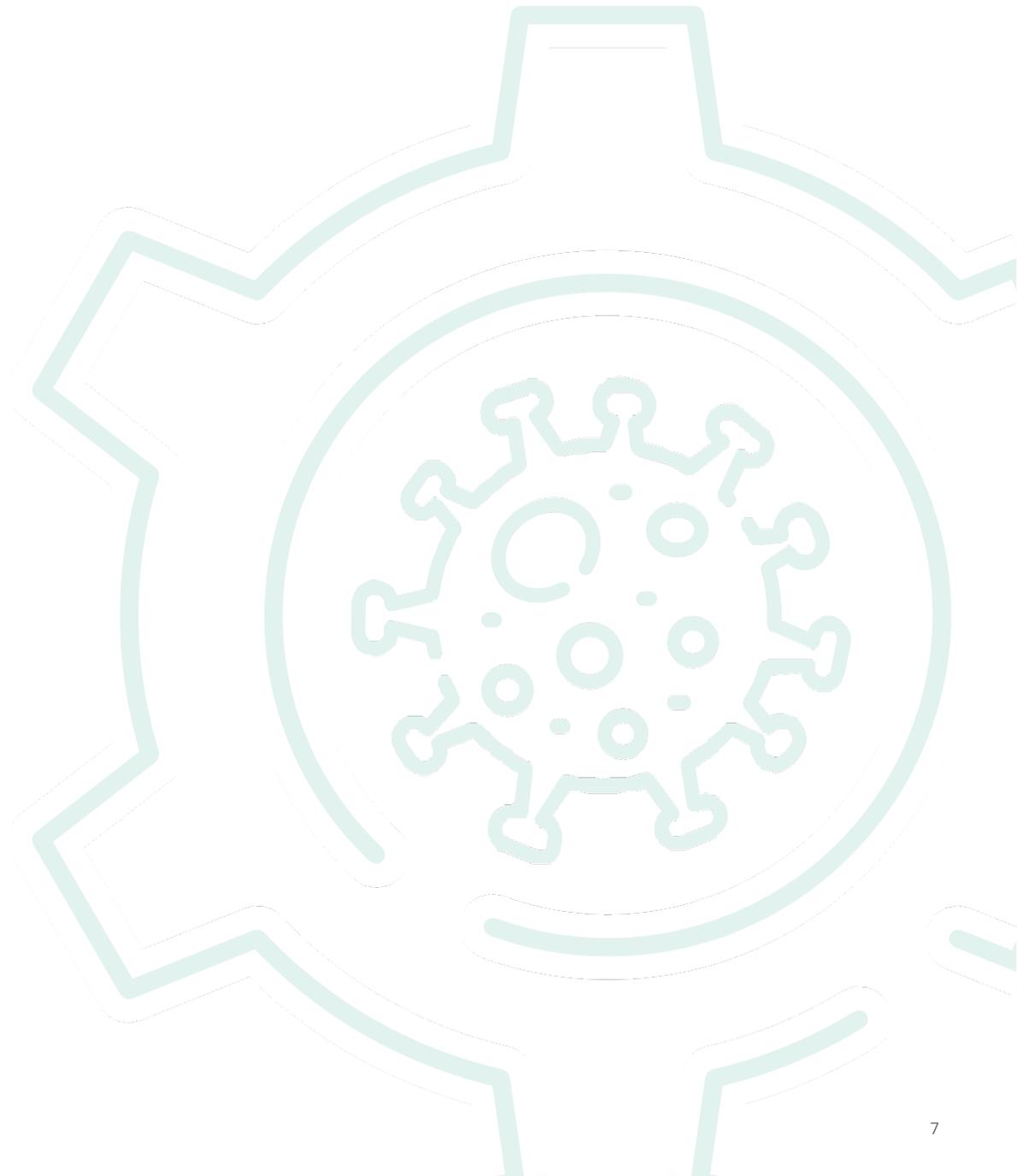
Recognising the strategic and tactical benefits of enhanced dialogue between stakeholders, the EC intends to provide guidance on public-private partnerships (PPPs) and address the barriers to information sharing, notably through consultations with the European Data Protection Board. In parallel, the EC will reinforce collaboration between Member States’ FIUs and will take over the management of FIU.net, a pillar of effective EU coordination and fused intelligence. This will facilitate the development and sharing of typologies that, in turn, enable obligated entities to better focus their investments on the detection of high risks.

The Action Plan paves the way for further reforms to the AML/CFT framework across the EU and globally. These include opportunities to test innovative approaches and tools, such as utility models, self-sovereign identity as well as greater data fusion and pooling. On these fronts, the Action Plan could provide greater clarity and recognition of the real opportunities to sustain and extend EU innovation and leadership. The six pillars of the Action Plan should be considered for their potential to catalyse these and other technology reinforcements to the AML/CFT architecture across the EU and globally.

Another area in which the Action Plan could go further is the need for greater harmonisation of the EU asset recovery regimes and strengthening the capacity of Member States’ asset recovery offices. The ability to identify, trace, freeze and confiscate proceeds of crime is an essential component of an enhanced supervisory and enforcement framework. It arguably takes even higher importance in the context of 6AMLD, which expands the definition of predicate offenses in a number of important ways. In this respect, the Action Plan could be more comprehensive still in strengthening the systemic effectiveness of the EU’s AML/CFT framework, including by making enhanced use of the Camden Assets Recovery Inter-Agency Network (CARIN) and associated capabilities held by Europol.

The Deloitte/Institute of International Finance report, "The global framework for fighting financial crime," addressed many of the same needs and opportunities raised by the EC's Action Paper. The report drew on interviews with executives of financial institutions and public sector officials responsible for AML/CFT and wider financial crime policy and enforcement.

As such, it provides a global outlook on the current state of financial crime risk management with key recommendations that could further help to advance an intelligence-led approach to AML/CFT across the European Union and other notable evolutions.



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