Prevention of the use of the financial system for the purposes of money laundering or terrorist financing: transparency of financial transactions and of corporate entities

2016/0208(COD) - 05/07/2016 - Legislative proposal

PURPOSE: to enhance transparency in order to fight against terrorist financing, tax evasion money laundering.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides following the ordinary legislative procedure on an equal footing with Council.

BACKGROUND: Directive (EU) 2015/849 of the European Parliament and the Council constitutes the main legal instrument in the prevention of the use of the Union's financial system for the purposes of money laundering and terrorist financing. That Directive must be transposed by 26 June 2017.

Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations.

Currently, gaps still exist in the oversight of the many financial means used by terrorists, from cash and trade in cultural artefacts to virtual currencies and anonymous pre-paid cards.

In addition to terrorist financing issues, offshore jurisdictions are often used as locations of intermediary entities that distance the real owner from the assets owned, often to avoid or evade tax.

On 2 February 2016, the Commission presented an action plan for strengthening the fight against terrorist financing which underscores the need to adapt to new threats and to improve the present framework to that effect.

On 22 April 2016 the informal ECOFIN Council also called for action in particular to: (i) enhance the accessibility of beneficial ownership registers, (ii) clarify the registration requirements for trusts, (iii) speed up the interconnection of national beneficial ownership registers, (iv) promote automatic exchange of information on beneficial ownership, and (v) strengthen customer due diligence rules

In its resolution of 16 December 2015, the European Parliament had already stressed that improved transparency, coordination and convergence in relation to corporate tax policies provides an effective framework to guarantee fair competition between firms in the Union and protect state budgets from adverse outcomes.

IMPACT ASSESSMENT: the Impact Assessment draws on relevant reports issued by Union and international organisations such as the European Banking Authority (EBA), the European Central Bank (ECB), Europol, the Bank for International Settlements (BIS), and the FATF.

The need to formulate specific regulatory provisions was retained as essential and as being the most appropriate option.

CONTENT: the proposal sets out a series of measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions and of corporate entities under the preventive legal framework in place in the Union, namely Directive (EU) 2015/849 (the "4AMLD"). It also sets out certain consequential changes to the relevant company law rules under Directive 2009/101/EC.

The amendments to the 4AMLD relate to the following points:

- Designate virtual currency exchange platforms as obliged entities: in order to improve the detection of suspicious virtual currency transactions, it is proposed to include virtual currency exchange platforms as well as custodian wallet providers within the scope of the Directive.
- Set lower maximum transaction limits for certain pre-paid instruments: it is proposed to suppress anonymity for the online use of reloadable and non-reloadable prepaid cards, and reduce the existing EUR 250 threshold for anonymous prepaid cards to EUR 150 when used face-to-face.
- Enable Financial Intelligence Units (FIUs) to request information on money laundering and terrorist financing from any obliged entity: the proposal clarifies the FIUs' mandate to request supplementary information from any obliged entity and have direct access to information held by obliged entities.
- Enable FIUs and competent authorities to identify holders of bank and payment accounts: the Commission proposes to require Member States to set up automated centralised mechanisms - such as a central registry or an electronic data retrieval system at Member State level, allowing for the swift identification of account holders. This mechanism would be directly accessible to national FIUs and potentially other competent authorities active in the field of anti-money laundering or counter-terrorist financing.
- Harmonise the EU approach towards high-risk third countries: it is proposed to modify the 4AMLD by providing a prescriptive list of enhanced customer due diligence measures to be applied by obliged entities, combined with an illustrative list of countermeasures that could be applied when dealing with high-risk third countries designated by the Commission.
- Improve access to the beneficial ownership registers: Member States will make public certain information of the beneficial ownership registers on companies and business-related trusts. Information on all other trusts will be included in the national registers and available to parties who can show a legitimate interest. The beneficial owners who have 10% ownership in certain companies that present a risk of being used for money laundering and tax evasion will be included in the registries. The threshold remains at 25% for all other companies.
- Interconnection of the registers: the proposal provides for the direct interconnection of the registers to facilitate cooperation between Member States.

Extending the information available to authorities: the Commission proposes that existing, as well as new, accounts should be subject to due diligence controls.