

POLICY BRIEF ON THE PROPOSED EU ANTI-MONEY LAUNDERING PACKAGE

Money laundering affects around 2-5% of the global GDP, exceeding 2 trillion USD annually, according to [the UN](#). Transactions involving dirty money account for about 1.5% of gross domestic product in the EU — or €133 billion, according to the European Commission. In recent years, the Pandora Papers, and other scandals have demonstrated how easy it is to launder dirty money into the EU's legal financial system. The EU's financial system is only as resilient as its weakest link.

In July 2021, the Commission [proposed](#) a new Anti-Money Laundering Package to step up the EU's ability to tackle money laundering and terrorist financing. The package includes a new Directive (the 6th Anti-Money Laundering Directive or AMLD) which deals with the powers and obligations of national supervisory bodies and Financial Intelligence Units; a new Regulation to establish detailed and directly applicable rules for so-called obliged entities (both financial and non-financial institutions); a Regulation to establish a new EU Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA); and a revision of a Regulation on transfers of crypto assets.

Transparency International (TI) has [welcomed the new package](#), which we see as a major step forward in the fight against illicit financial flows. However, there are areas in which the package could be strengthened. This briefing sets out TI's position on the package as well as a number of key recommendations.

1. The current European AML framework and its main challenges

The last big step in the creation of the current Union-wide framework to fight dirty money flows was the adoption, in 2018, of the [5th Anti-Money Laundering Directive](#). Although this was an important step forward, it soon became clear that there are still significant gaps. Moreover, the failure by a number of member states to implement the new rules fully, the lack of uniform implementation across the EU and the lack of serious consequences in case of non-compliance, all serve to prevent the completion of an effective and robust EU Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) system.

As [our report published last year showed](#), public beneficial ownership registers of companies and registers of trusts are a useful tool in the fight against money laundering, tax avoidance and corruption. However, there are still loopholes in the legislation, resulting in actual beneficial owners not being disclosed or remaining hidden behind complex ownership structures. In addition, beneficial ownership registers are not accessible to the public in several member states, or access is restricted by fees. Issues like inadequate beneficial ownership definitions, regulation of nominees (persons acting on behalf of a nominator legal entity or natural person), lack of independent verification of the information recorded in the registers, as well as weak sanctions for non-

compliance with the rules, undermine the availability and reliability of beneficial ownership information across the Union.

At the same time, existing powers for enforcement have not been used to the fullest possible extent. For instance, the board of supervisors of the European Banking Authority (EBA) [dropped its investigation](#) in the case of Danske Bank's Estonian branch despite a draft internal report identifying a number of supervisory failings. Furthermore, the oversight of non-financial obliged entities - such as auditors, notaries and gambling operators - is often insufficient or left to self-regulatory bodies. The need for new, independent EU level supervision has been raised by many stakeholders, including [Transparency International](#).

Finally, several key issues were not addressed by the 5th AMLD, leaving a vacuum on how member states should deal with certain aspects, such as how to implement effective national supervision or how national Financial Intelligence Units, or FIUs, should cooperate with FIUs in other member states.

2. The Commission's package of proposals

A) Regulation to create a new Anti-Money Laundering Authority

The [proposal](#) aims to strengthen money laundering supervision by creating a separate new authority at the European level, the so-called Anti-Money Laundering Authority (AMLA). AMLA, with its independent Executive Board, will have direct supervisory powers for some selected financial entities, as well as powers of indirect supervision, both for financial and non-financial obliged entities. Once in operation, the new Authority will also have the power to create guidelines, technical standards, and opinions to further harmonise national level supervisors' work.

The establishment of the new authority is in line with our recommendations. However, there is much room for improvement when it comes to the selection of financial entities that will be under direct supervision. AMLA must have direct access to information from obliged entities when it deems it necessary, and assessment mechanisms must be devised in a transparent manner. The possibility for AMLA to take over the supervision of a specific obliged entity, in case of insufficient national supervision, has the potential to ensure strong complementary oversight, if it is able to exercise this power free from external interference.

Key recommendations:

- AMLA's budget needs to be increased to ensure sufficient resources are available for both direct and indirect supervision. This should not come at the expense of national supervisors. A comparison with national level supervision and the single

supervisory mechanism of the European Central Bank suggests that the budget needs at least a doubling compared to what is being proposed.

- The selection criteria for financial entities that will come under the direct supervision of AMLA should be improved. The criteria should be based on risk, rather than (just) size and presence. The European added value of direct supervision by AMLA will materialise only if the riskiest financial entities are under its direct supervision.
- AMLA should have the option to place crypto-asset service providers under direct supervision, given the high anti-money laundering risk profile of this new industry.
- AMLA should be able to request information directly from non-selected obliged entities in order to develop their own assessment of supervisory convergence.
- AMLA's assessments of the state of supervisory convergence, including the recommendations it issues to member states, should be published in full and submitted to Council and Parliament for consideration.
- AMLA should retain the independent governance structure and strong decision-making and sanctioning powers for its Executive Board as foreseen in the proposal.
- The possibility for AMLA to take over direct supervision from national authorities should be based on objective and pre-defined criteria and benchmarks, with the final decision in the hands of the Executive Board, not the European Commission.

B) Sixth Directive on Anti-Money Laundering/Countering the Financing of Terrorism

The [draft Directive](#) sets out the rules for national authorities and creates updated frameworks for beneficial ownership registers. It includes new obligations for the establishment of real estate registers with beneficial ownership information, as well as better oversight for self-regulatory bodies responsible for supervising the non-financial sector. It also creates new responsibilities for authorities in charge of beneficial ownership registers. The proposal foresees new powers and resources for public authorities to ensure verification of beneficial ownership information and oversee compliance with the rules. The directive also sets out the tasks of Financial Intelligence Units (FIUs) and the framework for cooperation between them.

Key recommendations:

- The public BO registers of legal entities should be maintained without restrictions, such as access fees. Public access should be extended to beneficial ownership information of trusts.
- The verification of BO information by public authorities should be a key element of the AML/CFT system, with clear guidelines and methodology to be followed by national authorities, accompanied by an effective sanctions regime.

C) New Regulation on Anti-Money Laundering/Countering the Financing of Terrorism

The new Regulation imposes detailed requirements for customer due diligence, BO information, and internal policy requirements for obliged entities. If properly enforced; this change will bring about substantial convergence in national policies. Another important provision is that foreign entities entering a business relationship with an EU obliged entity – such as a bank or real estate agent - will need to register their BO information. Cash transactions above 10,000 EUR are set to be banned in order to close loopholes and to ensure all substantial transactions are traceable through the banking system. The EU's list of high-risk third countries also needed improvements: there are new provisions to create a new list of countries with a weak compliance record, to add to the existing list of third countries with strategic deficiencies in their AML/CFT regimes.

Key recommendations:

- The beneficial ownership registration requirement that will apply to real estate under the new rules should be extended retroactively to existing property owners. These real estate registers should be digitalised and equally accessible for law enforcement agencies and FIUs. The systems should also be interconnected with national BO registers.
- The threshold for identifying beneficial ownership should consider the risks posed by different legal entities as well as arrangements, and not be set automatically at the current 25% threshold. In the case of investment funds, a lower threshold should be applied to ensure end-investors are identified as beneficial owners.
- Intermediaries providing services connected to citizenship by Investment schemes (“golden passports”) should also be covered by AML rules as long as these schemes still exist. All entities and agencies should be covered by the Regulation, as the proposed rules only cover intermediaries providing services connected to Residency by Investment schemes (“golden visas”).

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