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EUROPEAN UNION AIMS TO INTENSIFY THE FIGHT MONEY LAUNDERING

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Prevention the use of the European Union’s financial system for the purposes of money laundering was always on top priorities for the European Parliament and the Council. Therefore, European Union has been developing its regulatory framework for over thirty years. All these were done in order to protect integrity and stability of internal market, and to protect society from crime. As European market is among the top three biggest economy in the world, the fight against money laundering in the EU level has also positive global effect. Moreover, geographical location of the Europe was always attractive for criminals to launder their illicit gains. Closing this gate for criminals can significantly diminish the volume of laundered illicit gains.

The story of anti-money laundering regulation in the European Union begins with the Council Directive of 10 June 1991. The legislation has been developed since then in order to mitigate the risks of money laundering. In 2015 4th anti-money laundering directive was adopted which set highest standards and also took account the recent FATF recommendations. These include central register of beneficial ownership (article 30), expansion of the criteria of politically-exposed persons (article 3(9), emphasis on a risk-based approach and including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States as predicate offences of money laundering.

With the 5th Directive of 2018, policy and regulation on detection and investigation of money laundering and also prevention it from happening was deepened and strengthened. Some of the main features of the Directive are described below. List of the obliged entities was expanded, which broadened the application of the Directive. The increased rate of usage of exchange services between virtual currencies and fiat currencies made it attractive for criminals to transfer their money in the EU zone. The anonymity of virtual currencies and having no obligation to identify suspicious activity of custodian wallet providers and aforementioned exchange services was identified as risk for Union’s anti-money laundering regulation. Therefore, with the new Directive anonymity related to virtual currencies and wallet providers and also for pre-paid cards was limited. The criteria

for the assessment of high risk third countries by the Commission was broadened, which covered legal and institutional framework, the powers and procedures of authorities and effectiveness of anti-money laundering system. With the new amendments enhanced customer due diligence measures, such as obtaining additional information, obtaining additional approval should be applied with respect to business relationships or transactions involving high-risk third countries. Anonymous safe-deposit boxes were prohibited to be kept by credit and financial institutions. Publicly available registers for companies, trusts and other legal arrangements was another amendment presented by the Directive. One of the crucial part of mitigating risks of money laundering is timely access to related information. Therefore, it was decided that establishment of a centralized register or data retrieval system is essential, in order to have immediate access to the data by national Financial Intelligence Units.

Another Directive was adopted in 2018 to combat money laundering by means of criminal law. The definition of criminal activity was specified, acts which constitute as predicate offence were listed in the Directive. Thus, 22 crimes, including newly added – cybercrimes, including any offence set out in Directive 2013/40/EU of the European Parliament and of the Council and environmental crimes, including any offence set out in Directive 2008/99/EC of the European Parliament and of the Council or in Directive 2009/123/EC of the European Parliament and of the Council were added to the scope of the Directive. Possibility of conviction for money laundering offences without conviction for predicate offences, including without establishment of perpetrator was step forward in tackling this problem and making investigation process effective. Self-laundering, when perpetrator of predicate offences and money laundering act is the same person, is also punishable by the Directive and obligation was put on Member States to take the necessary measures to ensure that. Money laundering offence was expanded and apart from previous acts, aiding and abetting, inciting and attempting are also punishable by the Directive. Criminal liability of legal persons was expanded, with strict criminal and non-criminal sanctions, such as exclusion from entitlement to public benefits or aid, temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision, a judicial winding-up order and temporary or permanent closure of establishments which have been used for committing the offence.

Even the developed AML framework of the EU, criminals always seek to find loopholes in the system in order to transfer their illicit gains. Therefore, European

Commission adopted Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing in 2020. Firstly, the process of implementation of existing framework by Member States was monitored. Special recommendations and support was given to individual Member States which has loopholes in the AML system. Moreover, development of EU legislative framework in this area was considered important in order to have more harmonized regulation throughout the Union. New areas which are not regulated by the EU legislation were determined, which played basis for proposing new Directive. One of the important suggestions was creation of EU level AML supervision, which is crucial in order to have proper cooperation between competent authorities and harmonized application of AML rules throughout the Union. Creation of European Economic and Financial Crimes Centre by the Europol was another institutional arrangement which took part in the Action Plan. One of the important downside of the Union AML system is limited information exchange between the Member States, as well as relevant authorities. Establishment of the EU coordination and support mechanism was proposed to tackle this problem.

Finally, in 2021 European Commission proposed legislative package. This package includes AMLA Regulation, New Regulation on AML/CFT, 6th AML Directive and Revised Regulation on Transfers of Funds. These documents consist of measures stipulated in the roadmap of the 2020 Action Plan. Mainly these are establishment of an EU single rulebook on AML, bringing about EU-level AML supervision and establishment of a support and cooperation mechanism for Financial Intelligence Units. The main objectives of the proposal are to tackle all the problems which 4th Directive could not address and to achieve more harmonized rules across the internal market. The estimated volume of suspicious financial volume (1% of the EU annual Gross Domestic Product) is a good example of seriousness of this problem. In 1996 International Monetary Fund estimation of amount of fund laundered was 2-5 % of world’s gross domestic product. The lesser figure in the Europe can be explained with effective anti-money laundering and in general anti-crime policy of the EU.

Even the comprehensive rules across the Union on AML there were many money laundering cases and EU credit institutions were involved in some of them. Moreover, most of the cases had cross-border nature. Therefore, it was decided that reforms are necessary, especially in the area of supervision and cooperation between FIUs. New proposed AMLA Regulation will establish Authority for Anti-Money Laundering and Countering the Financing of Terrorism in 2023, which will replace the competences of the European Banking Authority in the area of AML/CFT. To achieve the goals that were set in the Action Plan and the Regulation AMLA will host FIU.net

platform, draft regulations, adopt guidelines and recommendations and advice in the AML/CFT policy to the Commission. To tackle cross-border illegal transactions AMLA will also play a part in the Union's policy on third countries related to ML/TF threats from outside the Union.

The Authority will assess risks of the selected entities from Member States and also will take part in group wide supervision. In order FIUs to have adequate recourses and powers necessary to perform their tasks the AMLA will provide assistance when there is a need and facilitate cooperation between FIUs of Member States, as well as conduction of joint analysis of cross border suspicious transactions. Evaluation of non-financial supervisors and possibility of requesting imposition of sanctions on entities are also considered in the regulation. If there are indication of breaches of AML/CFT rules which are not properly tackled by the relevant authority the AMLA will have power to supervise this particular entity directly. While supervising these entities AMLA can address binding decisions and impose sanctions up to 10% of turnover or €10 million.

The new proposed AML Directive should replace 4th Directive, as amended by 5th Directive. The proposed Directive contains provisions to be transposed into national law. The need for this Directive was raised from divergence of legislations of Member States. These divergent regulations led to weak cooperation between FIUs, which have different level of powers in this field and impossibility for interconnections of key tools for FIUs. Therefore, it was decided that it is crucial to set minimum information that FIUs should access. It will allow effective cooperation between counterparts, with a framework for joint analysis provided by the Directive. Moreover, mechanisms for supervisory cooperation and specific cases when it is obligatory to cooperate were set in the Directive. Clear rules for FIUs and for obliged entities, tasks and powers of supervisors will allow better risk assessment and clarified understanding policy. Information access for FIUs, content of yearly report by the FIUs are also listed in the Proposal.

Remedies for loopholes and shortcomings in regulation of registers of beneficial ownership and nominee arrangements and an interconnection of the bank account registers are also set in the Directive. These amendments will allow precise information in the register of beneficial ownership and timely, unrestricted and free access to the information by the competent authorities. Licensing or registration of currency exchange and cheque cashing offices, and trust or company service providers and regulation of gambling services are set as obligatory requirement. The draft Directive also consists of provisions related to senior management, namely requirements for them, prohibition for persons convicted of money laundering, its

predicate offences, or terrorist financing, to operate. Supervisors should have powers to remove such persons from management of obliged entities. Special points are drawn to the risk assessment within the Union by the Commission and national risk assessment by the Member States.

The new proposed Regulation on AML/CFT will contain directly applicable rules which aims to harmonize AML rules across the single market. The list of obliged entities is enlarged, with inclusion of crypto-asset service providers, also crowdfunding platforms and migration operators and etc. Customer due diligence measures are made more precise in order to have consistent application across the Union. Newly introduced internal policy controls and procedures for obliged entities will provide more clarity. Rules on beneficial ownership are more detailed in the proposal with new requirements on nominees and foreign entities. Traders in good are prohibited to accept cash more than 10.000 EURO. This will remove administrative burden for these entities to report cash transactions. The provision and custody of anonymous crypto-asset wallets are prohibited.

The aim of proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets is to extended regulation covering crypto-asset service providers. This was also reflected in the FATF recommendations. Crypto-asset transfers will be treated as cross-border wire transfers, rather than domestic wire transfers. Therefore, information on originator and beneficial owner is required.

In conclusion, it is clear that the EU aims to have comprehensive regulation in this field, in order to have zero cases on money laundering within the single market. As mentioned above criminals will always seek to find ways to launder their illicit gains. Therefore, it is crucial to continue the policy on AML. Special attention should be paid to the new improvements in the field of technology. With the help of improved AI, the gates of EU can be closed for criminals, and detection and prevention of the money laundering cases can be easier and faster. This can also help legal transaction to be monitored in faster way and remove burdens for them to function in fair competition atmosphere.

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