ROADMAP			
TITLE OF THE INITIATIVE	Proposal for a Directive on criminalisation of money laundering		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG HOME – D.2 TERRORISM AND RADICALISATION	**DATE OF ROADMAP**	25/10/2016
LIKELY TYPE OF INITIATIVE	Directive		
INDICATIVE PLANNING	*4th quarter 2016*		
ADDITIONAL INFORMATION	-		

A. Context, Problem definition and Subsidiarity Check

Context

The **European Agenda on Security**[1] calls for additional measures in the area of terrorist financing and money laundering. On 2 February 2016 the Commission presented on an **Action Plan against terrorism financing**[2]. One of the **key actions** of the Action Plan is to consider a possible **proposal for a Directive** to introduce minimum rules regarding the definition of the criminal offence of money laundering and to approximate sanctions.

This initiative will complement other recent initiatives such as the proposed Directive on combating terrorism[3] and the amendments to the 4th Anti-Money Laundering Directive adopted on 5 July 2016[4]. These and other initiatives of the Action Plan aim at preventing money laundering and facilitate investigations into money laundering offences. They do not however tackle the diverging definitions of the money laundering crime and the differences in the sanctions for this crime across the Union. In addition, this initiative will consider the relevant international standards (FATF) and treaties (Warsaw Convention of 2005).

Problem the initiative aims to tackle

In order to use the revenues of their crimes in the legitimate economy and continue their illegal activities, criminals use the proceeds of their illegal activities to acquire, convert or transfer property while hiding the true nature of its origin. The same mechanisms can be used by individuals and groups involved in terrorist activities.

The current criminal framework against money laundering across Europe is **neither comprehensive nor sufficiently coherent** to be fully effective, with the consequence of **enforcement gaps and obstacles to information exchange and cooperation** between the competent authorities in different countries.

Instruments at EU level are **limited in scope** and do not ensure a comprehensive criminalisation of money laundering offences. All Member States have criminalised money laundering but there are significant **differences in the respective definitions of what constitutes money laundering, which are the predicate offences as well as the level of sanctions imposed**. In some MSs the self-laundering offence does not exist and there are diverging approaches to negligent money laundering. The scope of predicate offences is also different in the Member States. This does not ensure a comprehensive criminalisation of money laundering across the EU.

The current situation does not ensure effective enforcement or adequate deterrence throughout the EU, due to the often low level of sanctions/fines and the low prosecution rates. In addition to enforcement gaps, this situation creates a risk of 'forum shopping', i.e. criminals carrying out financial transactions where they perceive anti-money laundering measures to be weakest.

Furthermore, this situation affects cross-border police and judicial cooperation and exchange of information. For instance, differences in the scope of predicate offences make it difficult for competent authorities to cooperate with other EU jurisdictions to tackle cross-border cases (e.g. as regards money laundering related to tax crimes).

Subsidiarity check

The legal basis for this initiative is Article 83(1) TFEU which identified money laundering as one of the crimes with a particular cross-border dimension. However, there is currently no common definition of this crime in the EU. Member States apply diverging definitions of money laundering which affects cross-border investigations and co-operation, leads to enforcement gaps and insufficient deterrence throughout the EU.

The transnational nature of money laundering requires a comprehensive and cross-border response. These

1 COM (2015) 185 final of 28 April 2015
2 COM (2016) 50 final of 2 February 2016.
3 COM (2015) 625 final of 2 December 2015.
4 COM(2016) 450 final of 5 July 2016.

objectives can rather, by reason of the scale and effects of the problem as described above, be better achieved at Union level. Therefore, the Union may adopt measures in this field, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

B. What does the initiative aim to achieve and how

The objectives of the initiative are to tackle money laundering in all its forms as comprehensively and as uniformly as possible, to allow for better cross border information exchange and cooperation between law enforcement authorities and to ensure effective enforcement and deterrence.

No action would lead to growing difficulties for judicial and police authorities to deal with increasingly complex money laundering cases, opening opportunities to 'forum shop' and a sense of impunity by the perpetrators.

The following options should be analysed as a minimum:

1) Non-legislative action at EU or national level, e.g. guidelines on effective cooperation between competent authorities in cross border money laundering cases, exchange of best practices, training, etc.

2) Comprehensive legislative solution that transposes international standards and treaties into EU law:

2.1 Harmonisation of the definition of money laundering in line with FATF Recommendations, while providing for Member States a margin of discretion e.g. as regards the criminalisation of the mere possession or use of property of illicit origin, self-laundering as well as attempt and complicity, the definition and scope of predicate offences for ML as well as the level of sanctions.

2.2 Harmonisation in line with the Warsaw Convention: going beyond the requirements under 2.1, MSs would have less margin of discretion e.g. regarding the criminalisation of negligent conduct and would need to adopt provisions alleviating the burden of proof regarding predicate offences.

2.3 Harmonisation going beyond international obligations by e.g. defining the conditions and concepts of money laundering offences, including of the predicate offences, imposing thresholds for sanctions and establishing rules on information exchange for law enforcement purposes (currently laid down in Council Decision 2000/642/JHA) and other ancillary provisions such as rules on the use of appropriate investigative tools.

C. Better regulation

Consultation strategy

Key stakeholders to be consulted include the national authorities, such as Financial Intelligence Units, relevant ministries and law enforcement authorities, associations of legal professionals, the private sector, as well as other organisations that might be affected by the legal framework on the criminalisation of money laundering.

A targeted consultation will take place, including specific discussions with the Commission Expert Group on Money Laundering and Terrorist Financing. Member States will be requested to provide information on national provisions on the criminalisation of money laundering, the compliance with international standards and the cross-border dimension will be sent to relevant stakeholders. A dedicated expert meeting will be organised.

The Commission will also draw on the expertise of relevant agencies.

Impact assessment

A full Impact Assessment will not be carried out. The Commission services will support the proposal with a document analysing the problems and options.

Evaluations and fitness checks

The Commission can rely to a large extent on the draft study elaborated in 2013-2014. The information about the national provisions in the Member States will be updated. The Commission can also rely on recent mutual evaluation reports of FATF and Moneyval.