



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG MARKT - Impact Assessment on a proposal for a Directive on money laundering and terrorist financing and for a Regulation on transfer of funds.**

(draft version of 27 July 2012) *

(A) Context

The constantly changing nature of money laundering and terrorist financing threats, driven by the limitless ingenuity of criminals coupled with constant technological evolution of delivery channels, necessitates the periodic review, and where necessary, revision, of the legal framework designed to counter such threats. The EU rules are to a large extent based on international standards adopted by the Financial Action Task Force (FATF). They have been adapted to fit to an EU context and, as the EU Directive follows a minimum harmonisation approach, the framework has been completed by rules adopted at national level.

The FATF has undertaken a fundamental review of the international standards, which culminated in the adoption of a new set of recommendations in February 2012. In parallel to the international process, the European Commission has undertaken its own review of the European framework. The impact assessment has been prepared with a view to the revision of the Anti-Money Laundering framework.

(B) Overall assessment

The report needs to be significantly improved in a number of important respects. Firstly, the context and problem definition sections should provide a more complete description of Member States' anti-money laundering frameworks, the inconsistencies among them and of the content of the 2012 FATF review. Secondly, the report should considerably simplify the presentation of objectives and options, in particular by merging the two levels of operational objectives, and by designing alternative packages of policy measures. Thirdly, the report should explain how Member States will be differently affected, and should develop the analysis of impacts on SMEs. Finally, the report should strengthen the quantification of the impacts and, in particular, estimate the impact on the administrative burden for actors who will in future be covered by the Directive, or whose reporting obligations will increase.

Given the nature of these recommendations, the Board asks DG MARKT to resubmit a new version of the report, on which it will issue a new opinion.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Present a more complete picture of the context and the problems. The report should provide a clear presentation of Member States' anti-money laundering frameworks and their differences regarding key issues, such as sanctions regimes or the cash transactions thresholds that trigger the application of Customer Due Diligence rules. Likewise, the report should describe the content of the 2012 FATF review, and more precisely explain in which areas EU rules need to be updated to achieve international conformity. The report should also clarify the link with other Commission initiatives that are envisaged, such as those on criminal law, in particular, in relation to the tax crimes issues discussed in the report, and on access to bank accounts, for instance by indicating the conditions which allow or trigger banks to deny access.

(2) Simplify the presentation of objectives and options. The report should considerably reduce complexity of the analysis by cutting down the number of both operational objectives and policy options. To this end, level 1 and 2 operational objectives could be merged and the identified policy measures reorganised in alternative packages of options. Unrealistic/incoherent options should be discarded upfront. The content of the redesigned options should be clearly presented, their differences clarified and possible trade-offs explained (e.g. enhanced convergence of national frameworks and a more risk-based approach). The new options should be clearly linked to the revised operational objectives and be coherent with the identified problems in order to improve the intervention logic.

(3) Broaden and develop the analysis of impacts. The report should explain whether (and how) some Member States will be more affected than others by the envisaged changes to the EU framework. It should also develop the assessment of the impacts on SMEs, and provide more information on the consequences of the planned changes on customers, including unintended consequences, such as financial exclusion. Finally, considering the small percentage of funds laundered that are intercepted, the report should reflect on the overall effectiveness of the proposed measures. Thus, this could be one of the aspects to be assessed in the ex-post evaluation announced in the monitoring and evaluation section.

(4) Strengthen the quantification of the impacts. The analysis should better assess the economic impacts (and quantify when significant), in particular those of the most important measures. This can be achieved by better using the information available in the annexes and relevant studies. Available data on the compliance costs of the existing framework should be also better exploited and, where possible, extrapolated in order to estimate the changes in compliance costs resulting from the envisaged measures. Also, the impact of these measures on administrative burden should be better explained and calculated, in particular, with reference to the newly covered actors (e.g. in the gambling sector) or those who will face new reporting obligations due to the reduction of the cash transactions threshold from €15,000 to € 7,500. The report should also explain how that new threshold has been determined, and clarify why no variants to that threshold level have been analysed.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should explain more clearly on which aspects of the envisaged proposal stakeholders have been consulted. It should also explain the reasons why the delay for responses was shorter than the 12 week minimum standard for public consultation. The executive summary should fully respect the standard format provided in the Annexes to the IA guidelines.

(E) IAB scrutiny process

Reference number	2012/MARKT/001
External expertise used	No
Date of IAB meeting	5 September 2012