



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
D(2016)

## Opinion

**Title**                                    **DG JUST/FISMA/TAXUD – Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.**  
**(draft version of 13 April 2016)\***

### **(A) Context**

A new framework on anti-money laundering and counter-terrorist financing ("AML/CFT") was adopted on 20 May 2015. These new rules are, to a large extent, based on the international standards issued by the Financial Action Task Force (FATF) and consist of: (i) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("4AMLD"), and (ii) Regulation (EU) 2015/847 on information accompanying transfers of funds ("FTR"). The transposition date for the 4AMLD and the entry into force of the FTR is 26 June 2017.

Taking into account the conclusions of the extraordinary JHA Council of 20 November 2015 and of the ECOFIN of 8 December 2015, the Commission published on 2 February 2016 a Communication with an Action Plan to further step up the fight against the financing of terrorism. In the Action Plan the Commission committed to present – at the latest by the second quarter of 2016 – legislative proposals to amend the 4AMLD in five specific and targeted areas: (1) enhanced due diligence measures/counter-measures with regard to high-risk third countries; (2) virtual currency exchange platforms; (3) prepaid instruments; (4) the access of Financial Intelligence Units (FIUs) to – and exchange of – information (to strengthen FIU powers and cooperation); (5) the access of FIUs to centralised bank and payment account registers or electronic data retrieval systems. This impact assessment supports a possible amendment to 4AMLD.

Furthermore, recent disclosures by international media (e.g. the "Panama Papers") have highlighted deficiencies in the worldwide financial system. At the 22/23 April 2016 informal ECOFIN meeting, finance ministers called for action in particular to enhance the accessibility of beneficial ownership information.

### **(B) Overall opinion: POSITIVE**

**The Board gives a positive opinion, on the understanding that the impact assessment report will be further improved, in particular with respect to the following aspects:**

**(1) Context and EU added value: Better describe the political context that necessitates new action (cf. recent terrorist attacks and disclosures in relation to the "Panama papers") and why the proposed changes were not introduced as part of**

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

**the recent review. Put in perspective the preparatory work for this impact assessment and its interaction with the preparation of the Commission's February 2016 Communication. Explain how relevant EU action is for problems partly originating in third countries. Highlight the added value of EU action in view of protecting/strengthening the functioning of the internal market.**

**(2) Policy options and their impacts: Describe more in detail how the policy options would be implemented in practice and how they relate to each other. Strengthen the impact analysis, in particular with regard to data protection issues and administrative burdens. Diverging stakeholder views should be included in the analysis.**

**(3) Integrated report: Ensure a coherent presentation of the main IA with the Addendum, preferably by including the Addendum as an annex to the IA report and developing the introduction to also cover aspects covered therein.**

**The lead DG shall ensure that these recommendations are integrated in the report prior to launching the interservice consultation.**

### **(C) Main recommendations for improvements**

**(1) Clarify the political context of the initiative:** The report should better describe how the factual and political context has changed since the last revision of the Directive (4AMLD). In particular, it should show how the recent terrorist attacks have led to the necessity to revise the Directive and explain why the proposed changes were not (or could not be) introduced at the latest (quite recent) revision of the Directive. The report should also put in perspective the interaction with the preparation of the Commission's Action Plan and explain the consistency of the IA preferred options with the Commission's announced proposals. With regard to beneficial ownership issues (addendum to the report), the report should better explain recent changes of the context which allow considering policy options which were not considered in previous revisions.

**(2) Better explain the international context:** Especially with regard to the beneficial ownership issues (addendum), the report should explain in how far the problem drivers are situated in the EU or in third countries and to which degree EU policy can address these problems.

**(3) Better explain the EU added value of the proposed measures:** The report should strengthen the subsidiarity analysis by showing how the functioning of the internal market could be affected if the identified problems were solely addressed at the national level. It should then explain why EU action would be more effective and efficient (explaining the advantages of a harmonised approach).

**(4) Better explain the policy options and how they relate to each other:** The report should explain more in detail how the options differ from each other and how they would be implemented in practice. It should also clarify how the policy options address the identified problems, and how they relate to each other (showing whether they are supposed to act side-by-side or are mutually reinforcing).

**(5) Strengthen the impact analysis, particularly with regard to data protection issues:** The impact analysis should assess whether the policy options are in line with and proportionate with regard to data protection issues (both for issues in the main text and in the addendum). It should specify which type of safeguards would need to be put in place for the various policy options in order to respect data protection rules. The impact analysis should also clarify why the additional administrative burden from the policy

options remains limited (compared to previous revisions of the Directive). In the analysis, the diverging views of consulted stakeholder groups should be presented in more detail.

*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 be more clearly structured (problems – options – impacts), made more accessible to the non-specialist reader and ensure overall coherence between the main IA and the Addendum on beneficial ownership issues.

The Addendum– after adaptation along the recommendations above - should preferably be integrated into the main IA report as an annex and the introduction to the report should be broadened to also cover the issues raised in the addendum, explaining why it has been added.

**(E) RSB scrutiny process**

Reference number	2016/JUST+/054
External expertise used	No
Date of RSB meeting	12 May 2016