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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
Subject: Draft Council conclusions on an Anti-Money Laundering Action Plan

1. On 2 October 2018, the (ECOFIN) Council held a discussion on anti-money laundering and prudential supervision, on the basis of a Commission communication and proposal published on 12 September 2018 (documents 12108/18 and 12111/18).
2. At that meeting, Member States agreed to mandating the Financial Services Committee to prepare an action plan on anti-money laundering.
3. The Financial Services Committee presented draft Council conclusions to the Economic and Financial Committee which endorsed them on 23 November 2018.
4. It is therefore suggested that the Permanent Representatives Committee invites the Council to adopt the enclosed draft Council conclusions.

Draft COUNCIL CONCLUSIONS

on

an Anti-Money Laundering Action Plan

THE COUNCIL OF THE EUROPEAN UNION:

1. RECALLING the European Council conclusions of June 2016¹, and further to the Council conclusions of 12 February 2016² and 11 October 2016³, UNDERLINES that money laundering and terrorist financing will not be tolerated and that the fight against it is a high priority for the European Union.
2. REGRETS however that there have been a number of instances of alleged money laundering involving EU banks which underline the need to strengthen the effectiveness of the current framework, and CONFIRMS the importance of further improving the exchange of information and collaboration between prudential and anti-money laundering supervisory authorities, especially cross-border.
3. RECOGNISES the recent progress made, including with the adoption of the 5th Anti-Money Laundering Directive and the Directive on combating money laundering by criminal law, and AGREES that these are important steps in the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

¹ European Council of 28 June 2016 (ST 26/16).

² Council conclusions on the fight against the financing of terrorism of 12 February 2016 (ST 6068/16).

³ Council conclusions on the Commission Communication on further measures to enhance transparency and the fight against tax evasion and avoidance (ST 13139/16).

4. WELCOMES in this regard the presentation of the Commission's communication and proposal of 12 September 2018, on strengthening the Union framework for prudential and anti-money laundering supervision of financial institutions.
5. RECOGNISES the importance of work ongoing in other international fora, in particular efforts made in the context of the Financial Action Task Force (FATF) to promote international standards on Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT). SUPPORTS the efforts of FATF and MONEYVAL in assessing effective implementation of international standards by Member States and calls on those bodies to consider appropriately the supranational nature of the European Union when assessing those standards, while respecting the national focus of the specific implementation of AML rules.
6. RECALLS commitments taken in the G20, especially with regard to the implementation of high-level principles on transparency and beneficial ownership which remain a key priority for fighting against money laundering and terrorist financing.
7. In this context, THE COUNCIL:
8. URGES all Member States to swiftly complete the implementation of the 4th Anti-Money Laundering Directive, and INVITES Member States to transpose the 5th Anti-Money Laundering Directive ahead of the 2020 deadline.

9. UNDERLINES the importance of achieving rapid progress on further strengthening the EU legislative AML framework, in particular with regard to financial services, based on the results of the post-mortem review of the recent alleged money laundering cases involving EU banks, as well as on non-legislative actions. It AGREES, in regard to the latter, to proceed on the basis of the Action Plan for short-term actions as detailed in the Annex.

 10. INVITES the Commission to propose, as necessary and in respect for the interinstitutional agreement on better law-making, longer-term actions to bring about further improvements in the prudential and AML frameworks identified on the basis of a thorough assessment, including inter alia a rigorous post-mortem exercise, in due consultation with Member States. This assessment should be presented to the Council, at the latest in Q3 2019.

 11. INVITES the Commission to report back every six months on the progress made in the implementation of the Action Plan detailed in the Annex, starting in June 2019.
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ANNEX: EU Action Plan on Anti-Money Laundering (AML) = Short-term actions

Objective	Action	Responsible	Timeline
1. Identify the factors that contributed to the recent money laundering cases in EU banks, to better inform possible additional actions in the medium and long term	conduct a 'post-mortem' review of the recent alleged money laundering cases involving EU banks	COM, ESAs, in cooperation with the SSM, Member States and NCAs	Mid-2019
2. Map relevant money laundering / terrorist financing risks and best prudential supervisory practices to address them	<p>a) identify the different Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) -relevant aspects for prudential purposes</p> <p>b) identify the key areas that need closer scrutiny by prudential supervisors in relation to money laundering / terrorist financing risks</p> <p>c) identify best practices for integrating AML/CFT-related concerns into prudential supervision</p>	EBA in cooperation with EIOPA and ESMA as relevant, as well as prudential and AML/CFT supervisors*	End of 2019
3. Enhance supervisory convergence by providing common guidance on how to factor AML/CFT-related aspects into the prudential supervisory process	specify how prudential supervisors should take into account money laundering / terrorist financing risks in prudential supervision, including during the processes of (i) authorisation, (ii) assessment of acquisitions of qualifying holdings, (iii) fit and proper tests of management and (iv) review of the internal risk management in the context of the Supervisory Review and Evaluation Process	EBA in cooperation with EIOPA and ESMA, as well as prudential and AML/CFT supervisors	End of 2019

Objective	Action	Responsible	Timeline
4. Ensure effective cooperation between prudential supervisors and AML/CFT supervisors	a) cooperate throughout the various phases of the supervisory processes with a view to establishing adequate channels for information exchange and ensuring that ongoing information flows in both directions, in line with the 5th Anti-Money Laundering Directive	prudential and AML/CFT supervisors, and ESAs	January 2020
	b) map relevant competent EU AML/CFT supervisors as counterparties of prudential supervisors in case of groups operating cross-border	EBA, EIOPA or ESMA, in cooperation with the other ESAs to the extent relevant	End of 2019
	c) send a clear signal to the industry that money laundering / terrorist financing risks communicated to prudential supervisors by AML/CFT supervisors are also factored into the prudential supervisory process and that prudential supervisors cooperate closely with AML/CFT supervisors for this purpose, while respecting the specific tasks of both supervisors	Prudential and AML/CFT supervisors	Mid-2019
	d) conclude a broad multilateral Memorandum of Understanding with all relevant AML/CFT authorities in line with the 5th Anti-Money Laundering Directive	ECB, AML/CFT supervisors, with support of the ESAs	10 January 2019

Objective	Action	Responsible	Timeline
	e) ensure that practical arrangements are operational to allow AML/CFT concerns communicated to the ECB by AML/CFT supervisors to be consistently factored in when performing supervisory tasks	ECB, prudential and AML/CFT supervisors, in cooperation with ESAs as relevant	Mid-2019
5. Clarify aspects related to the withdrawal of authorisation	<p>a) clarify the degree of discretion of the prudential supervisors and the criteria for the withdrawal of the authorisation once a serious breach of AML/CFT rules has been ascertained, while taking into account the different practices and legal frameworks in Member States</p> <p>b) ensure a uniform interpretation of the language referring to serious breaches of AML/CFT rules in the Capital Requirements Directive</p> <p>c) ensure a consistent consideration of the consequences of licence withdrawal, particularly in terms of the need to preserve critical functions in the bank, the involvement of resolution authorities, depositor protection and the possibility to suspend payment of deposits by the deposit guarantee scheme</p> <p>d) identify measures available to prudential authorities to address prudential concerns stemming from money laundering / terrorist financing risks and breaches of AML/CFT rules</p>	EBA, EIOPA or ESMA, in cooperation with the prudential and AML/CFT supervisors and other ESAs to the extent relevant	Mid-2019

Objective	Action	Responsible	Timeline
6. Improve AML/CFT supervision and exchange of information between the relevant authorities	a) monitor the implementation of the ESAs' Risk-Based Supervision Joint Guidelines, and expand them to include guidance on best practices for the imposition of administrative sanctions in cases of breach of AML/CFT rules, while taking into account the different practices and legal frameworks in Member States, and without prejudice to the right of Member States to lay down criminal penalties or sanctions	ESAs	End of 2019
	b) enhance the ESAs Risk-Based Supervision Joint Guidelines to be applied by the AML/CFT supervisors specifying common procedures and methodologies for the supervision and assessment of credit and financial institutions' compliance with AML/CFT rules		End of 2019
	c) follow up on the recommendations addressed to ESAs in the Commission's 2017 Supranational Risk Assessment, and provide an update report		January 2019
	d) finalise the guidelines on the cooperation of, and information exchanges among, AML/CFT supervisors of credit and financial institutions and prudential supervisors, which will establish AML colleges, taking into account the need to ensure the broadest possible scope for such exchanges		Mid-2019
	e) finalise the joint opinion pursuant to Article 6(5) of the Anti-Money Laundering Directive		January 2019

Objective	Action	Responsible	Timeline
7. Share best AML/CFT supervisory practices and find ground for convergence whilst understanding national specificities in relation to AML/CFT	develop twinning/secondment programmes to allow regular staff exchanges and mentoring between supervisors and potentially with the ESAs	AML/CFT supervisors in collaboration with the ESAs	Mid-2019
8. Improve the ESAs' capacity to make better use of existing supervisory powers and tools	a) undertake stringent, non-duplicating reviews of the activities of supervisory authorities (AML/CFT and financial/prudential) to identify weaknesses and best practices	ESAs	Immediate
	b) building on the outcome of the reviews, increase the number of AML-focused training courses for supervisors (AML/CFT and prudential), and provide thematic guidance to authorities		
	c) continually monitor the need to investigate breaches of Union law in the field of AML/CFT		
	d) make greater use of the Anti-Money Laundering Committee (AMLC) as a forum for exchanging views on AML/CFT supervision and relevant risks		
	e) promote the use of existing prudential supervisory colleges to improve coordination and exchange of information on concrete AML/CFT issues and the links between prudential and AML colleges		

Objective	Action	Responsible	Timeline
	f) use Article 33 of the ESAs Regulations in its current form and scope as a legal base to develop a strategy for interaction with third-country AML/CFT authorities		

* For the purposes of this Action Plan, references to AML/CFT supervisors should be interpreted as including only the AML/CFT supervisors of the financial sector.

