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AMENDMENTS: 25

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Prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Proposal for a directive COM(2016)0450 - C8-0265/2016 – 2016/0208(COD)

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Amendments per language:

EN: 25

Amendment 1
Sven Giegold

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) Money laundering activities are carried out by making large use of cash transactions. The spread and the use of on-line bank accounts and other similar payments systems has largely increased in recent years, implying that there is scope to consider adopting a limit to cash transfers at EU level, without imposing a strong burden on households and firms. The Commission shall assess the size of a maximum threshold of cash transfers to be adopted at EU level, leaving to Member States the choice to impose lower thresholds. The assessment has to be carried out within 2 years from the date of entry into force of this directive.

Or. en

Amendment 2
Sven Giegold

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(9) When dealing with natural persons or legal entities established in high-risk third countries, Member States must require obliged entities to apply enhanced customer due diligence measures to manage and mitigate risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken towards high-risk third countries. Those different approaches

(9) When dealing with natural persons or legal entities established in high-risk third countries, Member States must require obliged entities to apply enhanced customer due diligence measures to manage and mitigate risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken towards high-risk third countries. Those different approaches

between Member States create weak spots on the management of business relationships involving high risk third countries identified by the Commission. Those gaps can be exploited by terrorists to channel funds in and out the Union financial system. It is important to improve the effectiveness of the list of high-risk third countries established by the Commission by providing for a harmonised treatment of those countries at Union level. This harmonised approach should primarily focus on enhanced customer due diligence measures. Nevertheless, Member States and obliged entities should be allowed to apply additional mitigating measures in addition to enhanced customer due diligence measures, in accordance with international obligations. International organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing may call to apply appropriate counters measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing risks emanating from countries. Member States should enact and apply additional mitigating measures regarding high risk third countries identified by the Commission by taking into account calls for countermeasures such as those expressed by the Financial Action Task Force (FATF).

between Member States create weak spots on the management of business relationships involving high risk third countries identified by the Commission. Those gaps can be exploited by terrorists to channel funds in and out the Union financial system. It is important to improve the effectiveness of the list of high-risk third countries established by the Commission by providing for a harmonised treatment of those countries at Union level. This harmonised approach should primarily focus on enhanced customer due diligence measures. Nevertheless, Member States and obliged entities should be allowed to apply additional mitigating measures in addition to enhanced customer due diligence measures, in accordance with international obligations. International organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing may call to apply appropriate counters measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing risks emanating from countries. Member States should enact and apply additional mitigating measures regarding high risk third countries identified by the Commission by taking into account calls for countermeasures such as those expressed by the Financial Action Task Force (FATF). *Besides counters measures taken towards high- risk third countries, a comprehensive assessment of AML/CFT regime in place in EEA countries and third countries shall constitute a necessary condition for granting passporting and equivalence for the access to the internal market. Access to the internal market might be generally limited, or limited with respect to certain sectors and obliged entities, when weaknesses in the AML/CFT regime are*

identified.

Or. en

Amendment 3
Sven Giegold

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10 a) The monitoring of the transposition of Union requirements in national regimes is not sufficient to ensure that national AML/CFT regimes are effective to tackle AML/CFT activities, since shortcomings often stem from the ineffective enforcement of the rules. In this respect, it is crucial for the internal market that the Commission and the ESAs have additional powers to evaluate the consistency of national AML/TF regimes with the EU framework monitoring implementation and enforcement of national rules. ESAs shall be assigned additional powers in the field of AML/CFT, including the powers to carry out onsite assessments in Member States competent authorities, compel the production of any information that is relevant to assessing compliance, issue recommendations for remedial action, make those recommendations public and take measures that are necessary to ensure that their recommendations are effectively implemented;

Or. en

Amendment 4
Sven Giegold

Proposal for a directive
Recital 10 b (new)

Text proposed by the Commission

Amendment

(10 b) ESAs shall be assigned additional powers in the field of AML/CFT, including the powers to carry out onsite assessments in Member States competent authorities, compel the production of any information that is relevant to assessing compliance, issue recommendations for remedial action, make those recommendations public and take measures that are necessary to ensure that their recommendations are effectively implemented.

Or. en

**Amendment 5
Sven Giegold**

**Proposal for a directive
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13 a) In order to overcome the current cooperation difficulties which exist between national FIUs, a European FIU should be set up in order to coordinate, assist and support Member States FIUs in cross-border cases. It would also be particularly suited to an integrated EU financial market and effective in combatting money laundering and terrorist financing in the internal market. The Member States FIU would still be primarily responsible for receiving STRs, analysing them and disseminate them to the national competent authority. The EU FIU would lend support to those Member States especially in maintaining and developing the technical infrastructure for ensuring the exchange of information, assisting them in joint analysis of cross border cases and strategic analysis, and coordinate the work of Member States

FIUs for cross-border cases.

Or. en

Amendment 6
Sven Giegold

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) Information on holding and control of immovable property such as buildings and land are not available in all Member States as well as no consolidated data exist on life insurance beneficiaries. Money Laundering activities are carried out also by relying on real estate transactions and through life insurance products. The establishment of central automated mechanisms, such as a register or a data retrieval system, in all Member States is essential to track this information and to support the investigation phase. Member States authorities need to have timely access to this data in order to proceed with cross-border checks and inquiries.

Or. en

Amendment 7
Sven Giegold

Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37 a) Existing data included in the Eurostat special report on Anti-money laundering show that the number of suspicious transaction reports submitted varies significantly across Member States and obliged entities; Data collection needs to be improved with the objective of

extending data coverage and enable the information are updated. Member States shall submit to Eurostat statistics on AML to allow the European Statistical office to publish every two years a report summarising and explaining these statistics.

Or. en

Amendment 8
Sven Giegold

Proposal for a directive
Recital 37 b (new)

Text proposed by the Commission

Amendment

(37 b) A relative large number of Suspicious Transactions Reports are submitted by credit institutions whereas very few of almost no Suspicious Transactions Reports are submitted by certain other obliged entities, in particular the different types of professional advisers, lawyers and trusts.

Or. en

Amendment 9
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 2 a (new)
Directive 2015/849
Article 6 paragraph 4

Text proposed by the Commission

Amendment

(2 a) In article 6 point 4 the following words are added:

If either the justification provided by a Member State is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member States continues failing to

enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering/ terrorism financing.

Or. en

Amendment 10
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 2 b (new)
Directive 2015/849
Article 7 paragraph 5

Text proposed by the Commission

Amendment

(2 b) In article 7 paragraph 5 the following words are added:

Other Member States may provide relevant additional information, where appropriate, to the Member State carrying out the risk assessment. A summary of the assessment shall be made publicly available. That summary shall not contain classified information.

Or. en

Amendment 11
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 2 c (new)
Directive 2015/849
Article 7 paragraph 5a new

Text proposed by the Commission

Amendment

(2 c) In article 7 the following

paragraph 5a is added:

The ESAs, through the Joint Committee, and the Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the ESAs and the Commission thereof and provide a justification of such a decision. If either the justification provided is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member State continues failing to enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering/ terrorism financing.

Or. en

Amendment 12
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 12
Directive 2015/849
Article 32a paragraph 3a (new)

Text proposed by the Commission

Amendment

3 a. In article 32a the following paragraph 3a is added:

By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for

ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal.

Or. en

Amendment 13
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 12 a (new)
Directive 2015/849
Article 32b (new)

Text proposed by the Commission

Amendment

(12 a) The following article 32b is inserted:

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling life insurance contracts or investment related services such as insurance contracts with premium refund held within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.

3. The following information shall be accessible and searchable through the centralised mechanisms referred to in

paragraph 1:

– for the contracting partner and any person purporting to act on behalf of the contracting partner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;

– for the beneficial owner of the life insurance contract: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;

- for the life insurance contract: date of conclusion of contract and insured amount.

4. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal.

Or. en

Amendment 14
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 13 a (new)
Directive 2015/849
Article 34 paragraph 2

Text proposed by the Commission

Amendment

(13 a) In article 34 paragraph 2 the following words are added:

The exemption shall not apply in the case of suspicions of tax evasion, tax avoidance and tax fraud.

Amendment 15
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 16 a (new)
Directive 2015/849
Article 48 paragraph 1

Text proposed by the Commission

Amendment

(16 a) In article 48 paragraph 1 the following words are added:

In particular, Member States shall require the competent authorities to monitor effectively activities of persons whom AML/CFT related tasks are delegated by obliged entities and self-regulatory bodies.

Or. en

Amendment 16
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 16 b (new)
Directive 2015/849
Article 48 paragraph 1a

Text proposed by the Commission

Amendment

(16 b) In article 48 the following paragraph 1a is added:

Member States shall ensure that one competent authority operates as supervising AML/CFT authority, which shall be structurally independent. The supervising AML/CFT authority shall ensure supervision and coordination of anti-money laundering activities carried out by other competent authorities and law enforcement bodies to ensure that all obliged entities are subject to adequate supervision including inspections,

preventions, monitoring and remedial actions. The supervising AML/CFT authority shall serve as a contact point for the supervising AML/CFT authorities of the other Member States, the Commission and the ESAs.

Or. en

Amendment 17
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 18
Directive 2015/849
Article 50a paragraph 1 subparagraph 1a (new)

Text proposed by the Commission

Amendment

In article 50a the following subparagraph is added:

Member States shall establish a common cooperation framework for competent authorities responsible for supervising credit and financial institutions for compliance with their AML/CFT obligations.

Or. en

Amendment 18
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 18 a (new)
Directive 2015/849
Article 51 paragraph 1

Text proposed by the Commission

Amendment

(18 a) Article 51 paragraph 1 is replaced by the following paragraph:

The Commission shall set up a European Financial Intelligence Unit (EFIU) to facilitate coordination, including the exchange of information between FIUs

within the Union. It may regularly convene meetings of the EU FIUs' Platform composed of representatives from Member States' FIUs, in order to facilitate cooperation among FIUs, exchange views and provide advice on implementation issues relevant for FIUs and reporting entities as well as on cooperation-related issues such as effective FIU cooperation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net or its successor, the joint analysis of cross-border cases, and the identification of trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.

Or. en

Amendment 19
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 18 b (new)
Directive 2015/849
Article 51 paragraph 1a new

Text proposed by the Commission

Amendment

(18 b) In article 51 the following paragraph 1a is added:

The EFIU shall coordinate, assist and support Member States FIUs in cross-border cases. The EFIU shall lend support to those Member States especially in maintaining and developing the technical infrastructure for ensuring the exchange of information, assisting them in joint analysis of cross border cases and strategic analysis, and coordinate the work of Member States FIUs for cross-border cases.

Or. en

Amendment 20
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 18 c (new)
Directive 2015/849
Article 51 paragraph 1b new

Text proposed by the Commission

Amendment

(18 c) In article 51 the following paragraph 1b is added:

The Commission shall provide the EFIU with adequate financial, human and technical resources in order to fulfil its tasks.

Or. en

Amendment 21
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 21 a (new)
Directive 2015/849
Headline (new) Article 57 a 57 b

Text proposed by the Commission

Amendment

(21 a) The following Subsection IIIa is inserted:

Cooperation between competent authorities supervising credit and financial institutions and professional secrecy

Or. en

Amendment 22
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 21 b (new)

Text proposed by the Commission

Amendment

(21 b) The following article 57a is inserted:

Member States shall provide that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive and auditors or experts acting on behalf of such competent authorities shall be bound by the obligation of professional secrecy.

Confidential information which they receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, such that individual credit and financial institutions cannot be identified, without prejudice to cases covered by criminal law and administrative sanctioning provisions.

2. Paragraph 1 shall not prevent the exchange of information between competent authorities supervising credit and financial institutions within a Member States or between competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other directives or regulations relating to the supervision of credit and financial institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Competent authorities supervising credit and financial institutions receiving confidential information as referred to in paragraph 1, shall only use this information:

- in the discharge of their duties under this Directive or under other directives or regulations in the field of AML/CFT, prudential regulation and supervising

credit and financial institutions, including sanctioning;

- in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings;

- in court proceeding initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulations and supervision of credit and financial institutions.

4. Member States shall ensure that competent supervising authorities cooperate with each other for the purposes of this Directive to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries.

5. Member States shall authorize their national competent authorities supervising credit and financial institutions to conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of the national competent authorities supervising credit and financial institutions mentioned in paragraph 1. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in paragraph 1. Confidential information exchanged according to these cooperation agreements shall be used for the purpose

of performing the supervisory task of those authorities.

Where the exchanged information originates in another Member State, it shall only be disclosed with the explicit agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Or. en

Amendment 23
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 21 c (new)
Directive 2015/849
Article 57b (new)

Text proposed by the Commission

Amendment

(21 c) The following article 57b is inserted:

1. Notwithstanding Article 57a (1) and (3), Member States may authorise exchange of information between competent authorities, in the same Member State or in a different Member State, between the competent authorities and authorities entrusted with the public duty of supervising financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in Article 2(1)(3) of this Directive and the authorities responsible for the supervision of financial markets in the discharge of their respective supervisory functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

2. Notwithstanding Article 57a (1) and

(3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other national authorities responsible for law on the supervision of the financial markets, or the investigation of money laundering, the associated predicate offences and terrorist financing.

However, confidential information exchanged according to paragraph 2 shall only be used for the purpose of performing the legal tasks of the authorities mentioned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

3. This Subsection shall not prevent the competent authorities supervising credit and financial institutions for compliance with this Directive from transmitting confidential information, for the purposes of their tasks, to other authorities responsible for supervising credit and financial institutions according to other directives or regulations, including the European Central Bank acting according to Regulation 1024/2013.

Or. en

Amendment 24
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 21 d (new)
Directive 2015/849
Article 58 point 2c (new)

Text proposed by the Commission

Amendment

(21 d) In article 58 paragraph 2 the following subparagraph is added:

Member States shall ensure that, in cases of breaches which are subject to criminal

sanctions, law enforcement authorities are properly informed about such breaches.

Or. en

Amendment 25
Sven Giegold

Proposal for a directive
Article 1 – paragraph 1 – point 22 a (new)
Directive 2015/849
Article 65 subparagraph 1a

Text proposed by the Commission

Amendment

(22 a) In article 65 the following subparagraph 1a is added:

The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to improving cooperation between Asset Recovery Offices of the Member States, cash payments, virtual currencies, empowerments to set-up and maintain a central database registering users' identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users.

By the end of 2017, the Commission shall draw up a report on the Member States' FIUs powers and obstacles to cooperation. This evaluation shall include the assessment of means to support joint analysis of cross-border cases and solutions to increase the level of financial intelligence within the EU. The report shall be accompanied, if necessary, by appropriate proposals to remedy the obstacles in cooperation regarding access to, exchange of and use of information. The report shall include an assessment of the need for:

(a) operational guidance on the proper implementation of this Directive;

(b) facilitation of information exchange on cross-border cases;

(c) a dispute settlement mechanism;

(d) support of joint strategic risk analysis at EU level;

(e) joint analysis teams for cross-border cases;

(f) obliged entities to report directly to FIU.net;

(g) establishment of a European Financial Intelligence Unit to enhance cooperation and coordination among national FIUs;

By 1 January 2019 the Commission shall draw up a report summarising the results of the assessment concerning the possibility to impose a limit to cash transfers at EU level;

Or. en