

Follow up to the European Parliament non-legislative resolution on the state of implementation of the Union's anti-money laundering legislation

- 1. Resolution tabled pursuant to Rule 132(2) of the European Parliament's Rules of procedure**
- 2. Reference numbers:** 2019/2820(RSP) / B9-0045/2019 / P9_TA-PROV(2019)0022
- 3. Date of adoption of the resolution:** 19 September 2019
- 4. Competent Parliamentary Committee:** None
- 5. Brief analysis/assessment of the resolution and requests made in it:**

The resolution takes stock of the implementation of EU anti-money laundering (AML) legislation. The resolution focuses on three main areas, namely:

- The state of play of transposition of the EU's 4th AML Directive and upcoming deadline for transposing the 5th. The resolution invites Member States to respect the deadline to transpose the rules and set up the registers of beneficial owners for companies and trusts, and requests the Commission to ensure proper transposition.
- The regulatory and supervisory shortcomings of the current framework, as highlighted in the AML package of July 2019. The resolution invites the Commission to assess whether a regulation could be a more appropriate legal act, and whether it would be appropriate to establish a support and coordination mechanism for Financial Intelligence Units at EU level. It takes note of the Commission report, which assesses that specific anti-money laundering supervisory tasks may be given to a Union body. Regarding the European Banking Authority's conclusions that a recent money-laundering case did not breach EU law, the resolution invites the Commission to continue its own evaluation.
- The need for the EU to draw up an independent and transparent list of high-risk third countries. The resolution points to the possibility of establishing a 'grey list' of potentially high-risk third countries, warns against too long processes that could weaken the preventive framework and requests clear benchmarks for countries which commit to undergo reforms.

Finally, the resolution calls for more human resources to be devoted to anti-money laundering within the Commission and the European Banking Authority.

- 6. Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The Commission has taken a proactive and strong stance on the transposition of the 4th AML Directive. After the transposition deadline of June 2017, completeness checks have covered all Member States. As a result, infringement proceedings were opened against all Member States. In four cases, the Commission referred the issue to the Court of Justice – with two cases still pending. 21 infringement cases are still ongoing, while five cases were closed.

Conformity checks are ongoing and the Commission intends to submit its findings to the Member States in December 2019. In order to assess the application of these rules, the Commission has signed a contract with the Council of Europe, which has just started. The contract will involve on-site visits to all Member States between now and summer 2021.

As regards the transposition of the 5th AML Directive and the set-up of registers of beneficial owners and trusts, the Commission organised several workshops to assist

Member States, of which one specifically on the register of beneficial owners. The Commission will be ready to start the assessment of the transposition laws once the deadline for transposition expires.

Further strengthening the Union's anti-money laundering legal framework remains a priority for the Commission. The President-elect has already emphasised the importance of a comprehensive policy approach in this specific field.

The reports that the Commission issued in July 2019 show that there are currently substantial divergences among Member States' legal frameworks and fragmentation in the manner rules are applied cross-border. The reports conclude that this may call for a reconsideration of the effectiveness of a system based on minimum harmonisation, including by assessing whether elements of the framework might be better framed in a directly applicable regulation. The Commission acknowledges the need to perform a dedicated and thorough analysis to identify the most proportionate and effective way forward. The analysis may also focus on which elements would benefit from further harmonisation.

At the same time, the reports of the Commission showed the need for a stronger mechanism to coordinate and support cross border cooperation and analysis of Financial Intelligence Units. Such a mechanism could include, as a minimum, powers to adopt legally binding standards, templates and guidelines in the area of the work of the Financial Intelligence Units. It could also include certain aspects of centralised reporting and a more central capacity building based on new IT tools to strengthen and facilitate joint analysis.

Finally, the reports of the Commission show that in order to ensure high quality and consistent anti-money laundering supervision, specific anti-money laundering supervisory tasks could be conferred to a Union body.

Identification of high-risk jurisdictions is key to enable obliged entities to carry out appropriate customer due diligence and identify when enhanced checks are needed. The Commission reiterates its commitment to an autonomous EU listing process in this respect. The Commission considers that the international standards issued by the Financial Action Task Force (FATF), on which EU legislation is based, should be the basis for any assessment. The EU methodology for the identification of high-risk countries should build on the work of the FATF and pay particular attention to those criteria, such as transparency of beneficial ownership, that are given particular importance in EU legislation.

As regards EU benchmarks, the Commission considers that the main reference document should be the FATF Action Plan. Only if and where strictly necessary, further mitigating measures ("EU Benchmarks") would be developed to top-up the FATF Action Plan and they would need to be tailored to the specific country and dependent on the comprehensiveness of the FATF Action Plan.

While the Commission agrees that the engagement process with third countries should not undermine the AML preventive framework, cooperating countries should be granted sufficient time to implement mitigating measures. In this sense, 12 months appear a realistic timeframe to balance the time needed by the third country to address concerns with the need not to expose the EU financial system to excessive risk.

The possibility to identify potentially high-risk countries ("grey list"), following the example of the EU's list of non-cooperative tax jurisdictions, does not appear in line with the current legal framework. The AML Directive provides that countries be listed only once strategic deficiencies are identified, which can only be the case once the assessment is completed. In order to ensure transparency, the Commission could however make public the list of countries under assessment.

Lastly, the Commission would like to highlight that the European Banking Authority will

see its role, powers and resources in the field of anti-money laundering already reinforced in the context of the new legislative proposals on which political agreement was reached in March 2019.