

ROADMAP			
TITLE OF THE INITIATIVE	Proposal to harmonise the criminal offence of money laundering in the EU		
LEAD DG – RESPONSIBLE UNIT	DG HOME A.1	DATE OF ROADMAP	10 / 2012
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context and problem definition

(1) What is the political context of the initiative?
(2) How does it relate to past and possible future initiatives, and to other EU policies?
(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?
<p>1) The political context is the fight against crime and in particular co-operation in judicial and police matters related to crime. In his letter to the European Parliament of 12 September 2012, President Barroso included actions to combat money laundering among the measures to be set out in the 2013 Work Programme.</p> <p>In its 2010 Action Plan implementing the Stockholm Programme, the Commission announced a legislative proposal updating the European criminal law framework on money laundering.</p> <p>2) It complements the efforts at EU level to prevent money laundering as addressed by the 3rd Anti-Money Laundering Directive, an internal market instrument, currently under review to further improve the EU's response to this phenomenon, but which does not and cannot as an internal market instrument address the penalisation of the crime. While the Anti-Money Laundering Directive addresses the preventive side of fighting money laundering, the intended harmonisation Directive would address the repressive one, the criminal law enforcement side. It relates to efforts undertaken to harmonise other types of crime at EU level when there is a strong cross border element, such as trafficking in human beings. It is also aimed at replacing in parts the Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering and confiscation of proceeds of crime.</p> <p>3) There is no policy at EU level yet to address the repressive side of money laundering by harmonising this offence. The existing FD 2001/500/JHA leaves a lot of discretion to Member States in this regard. An expert from EUROPOL considered that differences in criminalising this offence in Member States legislations have hindered effective police co-operation and cross-border investigations. DG MARKT consulted the Committee on the Prevention of Money Laundering and Terrorist Financing and presented a Report on the Application of the 3rd Anti-Money Laundering Directive. In contrast to the opinion expressed by EUROPOL, Member States are not at this stage entirely convinced of the necessity of a harmonised approach to the criminalisation of money laundering at EU level.</p>
What are the main problems which this initiative will address?
<p>As a negative side effect of the free movement of capital in the EU, criminals can move their funds easily across borders with a view to "launder" them and disguise their illicit origins. As stressed by EUROPOL, the differences in Member States' definitions of money laundering and the scope of this crime have led to difficulties for judicial and police co-operation and cross-border investigations. Apart from that, differences exist with regard to the penalisation of this crime.</p> <p>In particular, different views on what crimes can lead to money laundering (predicate offences) make it difficult for those in charge of preventing financial transactions related to money laundering and those that prosecute cross-border money laundering to identify whether money laundering took place.</p> <p>Harmonising the definition of the money laundering crime at EU level will lead to a common understanding of what acts constitute this crime. This will make it easier for all stakeholders involved in the fight against money laundering to co-operate in cross-border cases which will ultimately add effectiveness to the EU's response to this crime.</p>
Who will be affected by it?
<p>National (Law enforcement, police and judicial authorities, as well as Financial Intelligence units in Member States) and EU (Europol, Eurojust) bodies, and ultimately all entities playing a role in preventing money laundering as specified by the 3rd Anti-money laundering Directive (such as financial institutions, lawyers, accountants etc.).</p>

Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Article 83(1) TFEU identified money laundering as one of the crimes with a particular cross-border dimension. However, there is currently no common definition and scope of this crime given in the EU. Member States apply diverging definitions of money laundering which have caused the above described difficulties in cross-border investigations and co-operation. Only one common understanding of the crime at EU level can help to overcome these difficulties.

B. Objectives of the initiative
What are the main policy objectives?
To fight cross-border money laundering in the EU more effectively and by doing so enhancing security in the Common area of Freedom, Security and Justice in conformity with Art. 83 TFEU.
Do the objectives imply developing EU policy in new areas?
No.

C. Options
(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle?
Although this will be decided in the impact assessment, the following options should be addressed as a minimum: 1) No action at EU level 2) Non-legislative action at EU or national level. For example developing guidelines to help Member States to implement correctly Recommendation 2 of the Financial Action Task Force (FATF) which addresses the criminalisation of money laundering and contains certain requirements. 3) Comprehensive legislative solution that consolidates the existing legislation and proposes new avenues that would re-enforce the policy objectives (maximal legislative solution) Further options and their content will be explored during the impact assessment study. The study will include a thorough analysis of the respect of the proportionality principle.

D. Initial assessment of impacts
What are the benefits and costs of each of the policy options?
To be determined in the framework of the impact assessment. At this stage, it can be aid that harmonising the definition of the money laundering crime at EU level will lead to a common understanding of what acts constitute this crime. This will make it easier for all stakeholders involved in the fight against money laundering to co-operate in cross-border cases which will ultimately add effectiveness to the EU's response to this crime.
Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?
All impacts will be determined in detail in the framework of the impact assessment. Option 3, the comprehensive legislation solution, might lead to increased administrative burden, at least in some Member States. Depending on the definition of the scope of money laundering, it is expected that some Member States could raise fundamental concerns if the EU was to ask them to encompass self-laundering in the money laundering offence (self-laundering means that the offender of the predicate offence tries to hide/hides himself/herself the illicit origins of the proceeds that he/she got by the predicate offence).
(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (2) When will the IA work start? (3) When will you set up the IA Steering Group and how often will it meet? (4) What DGs will be invited?
An IA will be carried from end 2012. An IA Steering Group will be set up and meet on a monthly basis. It should include DG JUST, DG MARKT, LS, SG, DG TAXUD, OLAF.

- (1) Is any option likely to have impacts on the EU budget above € 5m?
- (2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.

No.

E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

Information on Member States' criminalisation of money laundering has already been collected by DG HOME. It is also contained in country-specific mutual evaluation reports carried out by the FATF or by Moneyval, the FATF-style regional body located at the Council of Europe, in the course of the third round of mutual evaluations which ended mid-2011. These bodies carry out assessments of their Member States in how far they comply with the FATF Recommendations on money laundering and terrorist financing and publish the results by means of country reports. The reports usually contain a part on the criminalisation of the money laundering offence. All MS are either member to the FATF or to Moneyval. In addition, data on money laundering was collected by EUROSTAT in co-operation with DG HOME and a report on this data was published in 2010. An up-dated version of this report will be published in 2012. Existing IA work undertaken by DG MARKT in the context of the incoming revision of the 3rd Anti-Money Laundering Directive may also be of use.

It is envisaged to commission an external preparatory study for the Impact Assessment.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

As stated above, Member States' representatives in the Committee on the Prevention of Money Laundering and Terrorist Financing have been consulted in February 2012. Seven MS took the floor. Six countries were against EU harmonisation of the ML offence: ES, LU, SE, UK, DE and CZ. Only FR showed a certain level of openness. In addition, in a public consultation on DG MARKT's application report regarding the 3rd Anti-Money laundering Directive, the issue of criminalisation of money laundering based on Art. 83 TFEU was raised and a number of responses from Member States but also from the private sector referred to it. In April 2012, DG HOME had made Member States' experts aware of this consultation in the Article 36 Committee of the Council (CATS) which deals, inter alia, with questions related to police and judicial co-operation. Following this, four Member States expressed a clear position against a Eurocrime Directive: UK, DE, FI and HU. Finally, experts from Eurojust and EUROPOL were orally consulted on this specific issue, too, in the margins of meetings at EUROPOL in October 2012. Contrary to the EUROPOL expert, the Eurojust expert could currently not see any problems in co-operation related to this specific crime. Further consultations with relevant stakeholders will be carried out in the context of the study.