

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

EU 12108/18 COM(2018) 645 final

EU 12108/18 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions

Submitted by HM Treasury on

01/10/2018

SUBJECT MATTER

The Commission have argued in this Communication that prudential supervisors may not sufficiently consider anti-money laundering/counter-terrorist financing (AML/CTF) policy, for reasons including different supervisory frameworks across Member States, and the lack of an EU legal regime in the area. The Commission make similar arguments in relation to European Central Bank (ECB) supervision of particularly significant financial institutions. The Commission therefore calls on the European Parliament and Council to endorse the actions set out in the Communication and to adopt the relevant legislative proposals by early 2019. These short-term proposals have been put forward by the Commission in the review of the European Supervisory Authorities (ESAs), on which a separate explanatory memorandum has been submitted.

For the longer-term, the Commission proposes to centralise AML supervision of banks and other financial institutions at EU-level. This follows on from significant AML failings in banks in certain EU states over the last twelve months, which have received significant media attention. These failings are not recurrent across all Member States, and have not taken place in UK-regulated banks or other financial institutions.

SCRUTINY HISTORY

The proposal for amending the European Supervisory Authority (ESA) Regulations is subject to parliamentary scrutiny, and continues to be held under scrutiny reserve by both the Commons and the Lords.

MINISTERIAL RESPONSIBILITY

The Chancellor of the Exchequer is the responsible Minister for this area.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Anti-money laundering is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

The proposed amendments have their legal basis on Article 114 of the Treaty on the Functioning of the European Union (TFEU). The proposals are within the boundaries of the articles.

The Justice and Home Affairs (JHA) opt-in is not relevant.

ii. European Parliament Procedure

Ordinary legislative procedure

iii. Voting procedure

Qualified voting majority

iv. Impact on United Kingdom Law

The proposed regulations within 12111/18 COM(2018) 646 final would enter into force 20 days after publication in the Official Journal. Most of those Regulations would then be directly applicable in EU Member States 24 months after their entry into force, with certain provisions entering into force 36 months after publication in the official journal. Minor changes to UK legislation, notably FSMA 2000 would be necessary to implement these proposals.

v. Application to Gibraltar

These measures will apply to Gibraltar.

vi. Fundamental rights analysis

The proposals within 12111/18 COM (2018) 646 final do not appear to engage any of the rights laid down in the European Convention on Human Rights or in the First or Thirteenth Protocol.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

The proposals apply to the European Economic Area.

SUBSIDIARITY

Due to high-profile recent failings of AML systems and controls in certain EU financial institutions, a joint working group of the ESAs, European Central Bank and European Commission has concluded that enhancing the current monitoring of the

implementation of EU-level AML and counter-terrorist financing (CTF) measures is needed.

The Commission considers that increasing the powers of the EBA will foster cooperation among national competent authorities (NCAs) and optimise the use of EU-level AML/CTF experience and resources. The Commission further considers that these proposals will improve the effectiveness of AML/CTF supervision and ensure that financial institutions are being regulated and supervised consistently across all Member States.

POLICY IMPLICATIONS (including Exit implications where appropriate)

On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in the future once the UK has left the EU.

AML/CTF supervision currently takes place at a national level. If fully implemented, this proposal would represent a significant shift in responsibility and power for supervision within the financial services sector away from NCAs and to the ESAs, particularly the European Banking Authority (EBA).

In discussions on the ESA Review to date, Member States and the European Parliament have not reached agreement on proposals to centralise more financial services supervision at the expense of NCAs. The increased mandate of the EBA in this proposal is likely to add to the contentious nature of these discussions.

The Government believe that at a broad level, any proposals to reduce inconsistencies in regulatory and supervisory practice between EU Member States should be proportionate to the risks posed.

Further technical analysis of this amended proposal will be required in the context of negotiations on EU withdrawal.

CONSULTATION

The Commission conducted a public consultation on the operations of the European Supervisory Authorities from 21 March 2017 to 16 May 2017.

IMPACT ASSESSMENT

This proposal is not accompanied by an impact assessment. This is because the Commission regard it as an urgent issue that needs to be resolved imminently, henceforth they did not have time to conduct one.

FINANCIAL IMPLICATIONS

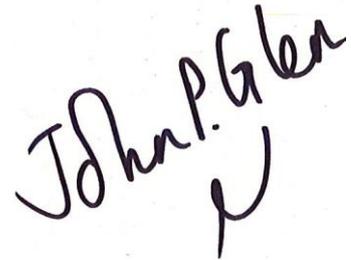
With the exception of the proposals that are being taken forward through the ESA Review, proposals are at an early stage, and have not yet been accompanied by a legislative proposal. There are therefore no quantified financial implications arising from these proposals.

TIMETABLE

With the exception of the proposals that are being taken forward through the ESA Review, no timetable has been set for legislative proposals being brought forward on the issues addressed within this Communication. The contents of the Communication have been discussed in September 2018 at expert-level, at the Financial Services Committee and at the Economic and Financial Committee. The UK has been represented in each of these meetings. The contents of the Communication will be further discussed at ECOFIN and at the Financial Services Committee in early October 2018.

OTHER OBSERVATIONS

MINISTERIAL NAME AND SIGNATURE: JOHN GLEN MP

A handwritten signature in black ink that reads "John P. Glen" with a stylized flourish underneath.

- * For an unnumbered Explanatory Memorandum substitute “Official text not yet received, or “Official text not available” as appropriate.
- ** For Explanatory Memoranda on documents not containing proposals for legislation substitute the word ‘DOCUMENT’ for ‘LEGISLATION’. Separate titles are used for CFSP and JHA business.
- *** Reference should be made to whether the assent, co-decision, consultation or co-operation procedure applies.
- **** Reference need not be made to consultation within Government as this will be implied by the information under Ministerial responsibility. This section should be used to describe consultation with external organisations.