

Horizon scanner

Financial Crime and Cyber-security



RISK RATING

Potential impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>The Financial Action Task Force (FATF) UK mutual evaluation – 2018</p> <p>FATF conducts reviews of each member on an on-going basis to assess financial crime prevention measures against the FATF recommendations. The aim of the review is to assess the UK's AML regime and to identify any areas of improvement.</p>	On-going	The UK onsite visit is anticipated to take place in early 2018 with a plenary discussion anticipated in October 2018.	
<p>Transposition of cyber-security Directive</p> <p>On 8 August 2017, the Government published a consultation on the transposition of the Security of Network and Information Systems Directive EU 2016/1148 into UK law. The consultation closed on 30 September 2017.</p> <p>The consultation covered: the essential services that need to be covered by the legislation; the penalties; the competent authorities to regulate and audit specific sectors; the security measures proposed to be imposed; timelines for incident reporting and how this affects digital service providers.</p> <p>The Directive aims to boost the overall level of network and information system security in the EU by ensuring that Member States have in place a national framework to support and promote the security of network and information systems. Businesses in certain vital sectors that are identified by Member States as operators of essential services, will have specific compliance and incident reporting obligations imposed on them.</p>	10 May 2018	National measures transposing Cyber-security Directive should apply from 10 May 2018.	Consultation European Commission Press Release



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Restrictive Measures Against Russia in response to the illegal annexation of Crimea and Sevastopol</p> <p>Since March 2014, the EU has progressively imposed restrictive measures against Russia in response to the illegal annexation of Crimea and Sevastopol.</p> <p>These restrictive measures include an import ban on goods from Crimea and Sevastopol; restrictions on trade and investment related to certain economic sectors and infrastructure projects, a prohibition to supply tourism services in Crimea or Sevastopol; and an export ban for certain goods and technologies.</p> <p>The measures apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol.</p>	Already in force	On 19 June 2017, the EU Council extended the restrictive measures by another year until 23 June 2018.	EU press release
<p>Sectoral and Financial Sanctions Against Russia</p> <p>EU sectoral sanctions against Russia have been in place now since July 2014 and have been amended and extended on a number of occasions. EU prohibitions targeting specific sectors of the Russian economy have now been extended until 31 July 2018.</p>	Already in force	It is likely the sanctions will continue to be extended and we expect a further extension of the sectoral sanctions shortly.	EU Council press release
<p>Asset recovery action plan</p> <p>In 2016, the Home Office committed to publish an asset recovery action plan in response to a Public Accounts Committee. The asset recovery plan will set out how the UK is responding to the challenges involved in improving the recovery of the proceeds of crime. While the UK's performance in asset recovery has been broadly stable, the government strives to be more ambitious in tackling criminal finances and the action plan will outline a new approach to asset recovery. In particular, the plan will seek to develop more effective ways of calculating the value of the wider benefits of financial investigation and make this information available to the public.</p>	Watching brief	The asset recovery action plan is due to be published later this year. We recommend monitoring the position.	Home Office Asset Recovery Statistics - Response and Fact Sheet



Immediate impact



Short term impact



Medium term impact



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<p>OFAC issues general licence regarding sanctions against Belarus</p> <p>On 24 October 2017, OFAC issued general licence 2D which authorises certain transactions with certain entities which were previously designated pursuant to Executive Order 13405.</p> <p>The general licence authorises transactions with certain designated entities and will remain in effect until 30 April 2018. The licence does not authorise the unblocking of assets.</p>	<p>Already in force</p>	<p>The general licence remains in effect until 30 April 2018.</p>	<p>Issuance of Belarus General License 2D</p>
<p>European Union to prepare sanctions on Myanmar</p> <p>On 26 February 2018, the European Council invited the High Representative to make proposals without delay for the extension of the existing arms embargo against Myanmar as well as issuing targeted restrictive measures against senior military officers of the Myanmar armed forces, in light of the situation in Myanmar, in particular in Rakhine State. The EU foreign policy chief is to draw up a proposed list of Myanmar military officers to be hit with EU travel bans and asset freezes.</p>	<p>Watching Brief</p>	<p>We recommend monitoring the position</p>	<p>Outcome of Proceedings Myanmar/Burma: Council adopts conclusions</p>



Immediate impact



Short term impact



Medium term impact



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<p>Cutting the sources of income for Jihadists - targeting the financing of terrorism.</p> <p>On 1 March 2018, the European Parliament made a number of recommendations on cutting sources of income for terrorists. These recommendations included:</p> <ul style="list-style-type: none"> – calling on Members States’ intelligence agencies to improve co-ordination and co-operation by setting up a stable European counter-terrorism financial intelligence platform – calling on Member States to step up the monitoring of suspicious organisations engaged in illicit trade, smuggling, counterfeiting and fraudulent practices – calling on Member States to take legislative action to guarantee that banks monitor pre-paid cards closely to ensure they can only be re-loaded via bank transfer and personally identifiable accounts – calling on Member States to make necessary provisions to full facilitate the opening of a bank account to all those present in their territory – stressing the need to put an end to any type of tax haven that facilitates money laundering, tax avoidance and tax evasion; – calling for the EU to step up the application of sanctions on those that in any way make economic resources available to ISIS/Daesh, Al-Qaeda or other terrorist groups – calling on Member States to provide oversight and regulation of informal money transfer systems such as Hawala) 	Watching brief	The European Parliament has instructed its President to forward this recommendation to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, and the Member States.	European Parliament/ Legislative Observatory
<p>UK Treasury Committee Sets Sights on Virtual Currency</p> <p>On 22 February 2018, the UK’s Treasury Select Committee announced that it was launching an inquiry into the position of virtual currencies and distributed ledger technology (“DLT”). As well as examining the impact of DLT on financial institutions it will also look at potential changes to regulation in this space. It will look at the potential risks that digital currencies could generate for consumers, businesses, and governments, including those relating to volatility, money laundering, and cyber-crime.</p>	Watching brief	Inquiry ongoing. We recommend monitoring the position.	Digital currencies inquiry launched



Immediate impact



Short term impact



Medium term impact



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<p>FinTech Action Plan</p> <p>On 8 March 2018, the European Commission unveiled an Action Plan on how to harness the opportunities presented by technology-enabled innovation in financial services (FinTech).</p> <p>The Action Plan envisages enabling the financial sector to make use of the rapid advances in new technologies such as blockchain, artificial intelligence and cloud services. It also seeks to make the markets safer and easier to access for new players.</p> <p>The Action Plan sets out 23 steps, including:</p> <ul style="list-style-type: none"> – hosting an EU FinTech Laboratory – an EU Blockchain Observatory and Forum reporting on the challenges and opportunities of crypto assets and a strategy on distributed ledger technology and blockchain – a consultation on the digitisation of information published by listed companies in Europe – workshops to improve information-sharing when it comes to cybersecurity – the commission will also present a blueprint with best practices on regulatory sandboxes based on guidance from European Supervisory Authorities 	Watching brief	We wait to see how the Action Plan will develop.	FinTech Action Plan
<p>EU Proposal for a Directive on countering money laundering by criminal law</p> <p>The European Commission has proposed a Directive requiring Member States to criminalise money laundering. Whilst many Member States have already criminalised money laundering, the Directive proposes to harmonise money laundering offences and sanctions as currently there are differences across the EU. The Directive will set out minimum rules concerning the definition of criminal offences and sanctions.</p>	Watching brief	On 8 June 2017, the European Council adopted its position on the proposed Directive. The Council and the European Parliament will enter into negotiations on the final text as soon as the latter has decided on its position. The legislative proposal was published on 21 December 2016 and on 17 January 2018, a decision made to enter into interinstitutional negotiations was confirmed by plenary. The next stage is the first reading at Parliament.	EU Proposal for a Directive on countering money laundering by criminal law Legislative Proposal



Immediate impact



Short term impact



Medium term impact



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<p>Proposed 5th Money Laundering Directive ("5th MLD")</p> <p>In July 2016, the European Commission proposed a further directive to amend the 4th MLD and further enhance the AML framework. This was followed by a presidency compromise text which proposed a new 5th MLD, which aimed to make amendments to the fourth money laundering directive ("4MLD") and which aimed to tackle terrorist financing risks associated with virtual currencies and pre-paid cards.</p> <p>After extensive discussion, EU authorities reached a political agreement on the 5th MLD on 18 December 2017. The European Council published a final compromise text on 19 December 2017. Key changes to the 4MLD include:</p> <ul style="list-style-type: none"> – access to beneficial ownership registers – lowering the threshold for identifying holders of pre-paid cards from EUR 250 to EUR 150 – the regulation of virtual currency exchange platforms and custodian wallet providers 	<p>Watching brief: next key date – 16-19 April 2018</p>	<p>The European Parliament has indicated that it intends to adopt the 5th MLD during its 16 to 19 April 2018 plenary session. It is unclear when the European Council will formally adopt it.</p> <p>Once adopted by the Council and the Parliament, the final text of 5th MLD will be published and it is expected to come into force 20 days after publication. Member States are expected to have 18 months in which to transpose it into national law.</p>	<p>European Parliament briefing</p> <p>European Parliament / Legislative Observatory</p>



Immediate impact



Short term impact



Medium term impact



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<p>Sanctions and Anti-Money Laundering Bill</p> <p>The Government has proposed a Sanctions and Anti-Money Laundering Bill in anticipation of Brexit. The Bill aims to ensure that when the UK leaves the EU, the government can continue to impose, update and lift sanctions and AML regimes.</p> <p>The Sanctions and Anti-Money Laundering Bill will enable the UK government to impose sanctions/AML legislation where appropriate for the purposes of (i) complying with United Nations obligations or other international obligations, (ii) furthering the prevention of terrorism or for the purposes of national security or international peace and security or (iii) furthering foreign policy objectives, to make provision for the purposes of the detection, investigation and prevention of money laundering and terrorist financing and (iv) implementing Standards published by the Financial Action Task Force relating to combating threats to the integrity of the international financial system, and (v) for connected purposes.</p>	On Brexit	<p>The Bill is progressing through Parliament.</p> <p>The Bill will need to be gain Royal Assent before "Brexit day" to ensure the UK can continue to comply with international sanctions and AML obligations and standards.</p>	<p>Parliament timetable</p> <p>The draft Bill</p>
<p>Proposal for EU Regulation on framework for the free flow of non-personal data in the EU</p> <p>The European Commission has issued a proposal for a Regulation on a framework for the free flow of non-personal data in the EU. The purpose of the Regulation is to unlock the potential market in data in order to achieve a more competitive and integrated market for data storage and processing services and activities.</p>	Watching brief	We await further updates in regard of the proposal.	<p>Proposal</p> <p>European Parliament / Legislative Observatory</p>



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<p>Data Protection Bill</p> <p>The draft Data Protection Bill, which will replace the Data Protection Act 1998, has been published. When enacted, the Bill will supplement the GDPR (which comes into force on 25 May 2018) while the UK remains in the EU and is intended to be read alongside the GDPR. Upon the UK leaving the EU, the Data Protection Bill (which will have transitioned to the Data Protection Act 2018 by that point) will be primary legislation governing data protection of UK businesses and UK data subjects. It is important to note that the Data Protection Bill could not override the GDPR in respect of its applicability to the personal data of EU data subjects or of UK businesses targeting or dealing with EU data subjects.</p> <p>The Bill will apply a regime that is broadly equivalent to GDPR to certain types of processing to which the GDPR does not apply (eg activities which are outside the scope of EU law). It will also implement GDPR derogations and provide clarity on definitions used in the GDPR in a UK context.</p> <p>The Bill will also implement the Law Enforcement Directive and make provision for processing of personal data by competent authorities for law enforcement purposes.</p> <p>The Bill also contains provisions relating to processing of personal data by intelligence services; setting out the scope of the Information Commissioner's remit; setting out the data protection offences and how data protection law is to be enforced, including the power to levy fines.</p>	<p>On Brexit</p>	<p>Following Brexit the GDPR will be transposed into domestic law (in accordance with the provisions of the final form European Union (Withdrawal) Bill) and will apply alongside the Data Protection Bill until any replacement or consolidating legislation is passed. The intention is that the UK and EU data protection regimes will remain aligned post Brexit, with the aim of ensuring that the UK is awarded adequacy status so that data flows can continue uninterrupted.</p> <p>The Bill passed its second reading in the House of Lords on 5 March 2018. The Bill will now be considered in a Public Bill Committee, schedule to conclude on 27 March 2018.</p>	<p>Data Protection Bill</p> <p>Data Protection Bill before Parliament</p>



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Medium term impact



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<p>EU proposal for new EU wide cyber-security measures</p> <p>In September 2017, the EU Commission proposed a set of measures to enhance cyber-security in the EU. This includes a proposed Regulation, a European Cyber-security Research and Competence Centre, a blueprint for how Europe and Member States can respond quickly, operationally and in unison when a large-scale cyber-attack strikes, more solidarity, stronger cyber defence capabilities and enhanced international cooperation.</p> <p>The proposed Regulation sets out:</p> <ol style="list-style-type: none"> 1. the objectives, tasks and organisational aspects of the European Agency for Network and Information Security ("ENISA"), which will include assisting Member States in dealing with cyber-attacks and helping implement the Security of Network and Information Systems Directive. ENISA was set up in 2004 but its current mandate only lasts until 2020. The Regulation would give it a permanent mandate; and 2. the framework for establishment of an EU wide cyber-security certification scheme to ensure that ICT products and services are cyber secure. <p>In addition, the Commission also proposes a Directive to combat fraud and the counterfeiting of non-cash means of payment, by expanding the scope of offences related to information systems to all payment transactions, including those made through virtual currencies.</p>	<p>Watching brief</p>	<p>Various impact assessments have been published and the Commission's consultation ended on 6 December 2017. We await further information on the development of these proposals.</p>	<p>Proposal</p> <p>European Commission Press Release</p>



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