

Horizon scanner

Financial Crime and Cyber-security



RISK RATING

Potential impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>US withdrawal from Iranian Joint Comprehensive Plan of Action ("JCPOA") and the imposition of wind-down provisions for non-US entities</p> <p>On 9 May 2018, the US withdrew from the JCPOA and announced that US sanctions against Iran will be re-imposed.</p> <p>US secondary sanctions which were in place prior to the JCPOA, impacting non-US financial institutions, will come back into effect by no later than 5 November 2018. In addition, new US sanctions are expected.</p>	5 November 2018	In response, the EU is exploring options (including amending the Blocking Regulation) to provide protection for EU entities which wish to engage in business with Iran.	<p>Eversheds Sutherland article on US withdrawal</p> <p>EU response to US withdrawal</p> <p>The Blocking Regulation</p>
<p>FCA consultation on changes to the Financial Crime Guide ("FCG")</p> <p>The FCA is proposing to add a chapter on insider dealing and market manipulation to the FCG and also make a number of general changes as a result of recent regulatory changes to ensure the guide remains up to date.</p>	Autumn 2018	The Consultation has been open since 27 March and closes on 28 June 2018, with the finalised guidance being available in Autumn 2018.	<p>Eversheds comment</p> <p>Consultation process</p>
<p>Public Consultation on reforming the law of search warrants</p> <p>The Law Commission launched their public consultation on reforming the law of search warrants on 5 June 2018.</p> <p>The Law Commission has identified a number of problems with the current law including:</p> <ul style="list-style-type: none"> – the sheer number of provisions (175 different powers to issue a search warrant), coupled with their complexity, leads to a confusing legislative landscape – there is inconsistency across search warrant provisions and in the procedure for obtaining such a warrant – a large proportion of the legislation (including Police and Criminal Evidence Act 1984) predates the advent of electronic material and risks failing to deal with emerging digital technology and the forms in which criminal activity now takes place <p>The consultation seeks comments on proposals to simplify the law and procedure for obtaining a search warrant as well as modernising the law to ensure it is equipped to deal with current technology.</p>	5 September 2018	The consultation will run until 5 September 2018.	Law Commission public consultation



Immediate impact



Short term impact



Medium term impact



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<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 was anticipated to take place in early 2018 with a plenary discussion anticipated in October 2018.	Global assessment calendar
<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 18 June 2018, the European Council extended the restrictive measures in response to the illegal annexation of Crimea and Sevastopol by Russia until 23 June 2019.	Illegal annexation of Crimea and Sevastopol: EU extends sanctions by one year
<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



Immediate impact



Short term impact



Medium term impact



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<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
<p>OFAC extends Belarus sanctions relief for 6 months</p> <p>On 26 April 2018, OFAC issued general licence 2E, 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 October 2018. The licence does not authorise the unblocking of assets.</p>	Already in force	The general licence remains in effect until 30 October 2018.	Issuance of Belarus General License 2E
<p>European Union extends Myanmar arms embargo</p> <p>On 26 April, the Council of the European Union extended the existing embargo on arms and equipment that can be used for internal repression in relation to Myanmar for one year. In addition, it prohibited the export of dual-use goods for use by the military and border guard police and imposed restrictions on the export of equipment for monitoring communications that might be used for internal repression. The Council further adopted a legal framework for targeted restrictive measures against certain persons from the Myanmar Armed Forces and the border guard police including travel bans and asset freezes.</p>	Already in force	The embargoes will remain in effect until April 2019.	EU extends Myanmar arms embargo



Immediate impact



Short term impact



Medium term impact



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<p>House of Lords Select Committee appointed to review Bribery Act 2010</p> <p>The Committee was formally appointed on 17 May 2018 and is due to release a report by the end of March 2019.</p> <p>The report will focus on: the extent to which the Bribery Act has led to stricter prosecutions of corrupt conduct, a higher conviction rate and/or a reduction in such conduct; and the impact the Act has upon business and in particular small and medium enterprises.</p>	31 March 2019	The report will be released by the end of March 2019.	Parliament press release
<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 and written evidence has been submitted in respect of the same. We recommend monitoring the position.	Digital Currencies Inquiry
<p>UK Treasury Committee launches economic crime inquiry</p> <p>On 29 March 2018, the UK Treasury Committee launched an economic crime inquiry.</p> <p>The inquiry will have two strands: one looking at the anti-money laundering and sanctions regime in the UK; and the other considering economic crime as it affects consumers as well as the effectiveness of financial institutions in combatting economic crime.</p> <p>The Committee will look at the scale of money laundering, terrorist financing and sanctions violations in the UK as well as at fraud and how the rise of online banking and payments has potentially exposed consumers to greater risk of fraudulent activity.</p>	Watching Brief	The inquiry is on-going.	Economic Crime Inquiry



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Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<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 money laundering, identify specific predicate offences and will set minimum rules for appropriate sanctions.</p>	<p>Watching brief</p>	<p>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 preliminary agreement on new rules was reached on 30 May 2018. On 7 June 2018 the EU issued a press release noting that informal agreement between Parliament and Council negotiators was reached. Agreed text for the proposed Directive now needs to be formally approved.</p>	<p>Press release from EU</p> <p>EU Proposal for a Directive on countering money laundering by criminal law</p> <p>Legislative Proposal</p>
<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 across the EU.</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.</p> <p>The 5th MLD will, among other matters:</p> <ul style="list-style-type: none"> - enhance powers of financial intelligence units across the EU - address risks associated with the use of virtual currencies by bringing providers of exchange services into scope - refine EDD requirements for high risk jurisdictions - require Member States and the EU to publish lists of prominent public functions, to assist in the identification of PEPs 	<p>Watching brief</p>	<p>The European Parliament adopted the 5th MLD on 19 April 2018 and the European Council adopted it on 14 May 2018.</p> <p>The final text of the 5th MLD will be published in the Official Journal (although a date for this is currently unknown) 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 / Legislative Observatory</p> <p>Provisional Text adopted</p>



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Short term impact



Medium term impact



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<p>Corporate tax avoidance</p> <p>On 25 May 2018, the European Council adopted rules aimed at boosting transparency in order to tackle aggressive cross-border tax planning.</p> <p>The new Directive is designed to prevent corporate tax avoidance. It will require intermediaries such as tax advisors, accountants and lawyers that design and promote tax planning schemes to report the schemes that are considered as potentially aggressive. Member States will be required to exchange the information they receive through a centralised database and will be obliged to impose penalties on intermediaries that do not comply with transparency measures.</p>	<p>31 December 2019</p>	<p>Member states will have until 31 December 2019 to transpose into national laws and regulations. The new reporting requirements will apply from 1 July 2020.</p>	<p>Corporate tax avoidance</p>



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Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<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 now made a number of recommendations to the EU Council, Commission and the European External Action Service.	European Parliament/ Legislative Observatory



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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 	<p>Watching brief</p>	<p>We wait to see how the Action Plan will develop.</p>	<p>FinTech Action Plan</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>	<p>Watching brief</p>	<p>The proposal is awaiting Parliament 1st reading.</p>	<p>Proposal European Parliament / Legislative Observatory</p>



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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>	Watching brief	Various impact assessments have been published and the Commission's consultation ended on 6 December 2017. On 10 July 2018, there will be a vote schedule in committee and the 1 st reading.	Proposal Legislative Observatory
<p>Criminal Fraud (Private Prosecutions) Bill 2017-19</p> <p>This Bill makes provision about private prosecutions in cases of suspected criminal fraud in certain circumstances; and for connected purposes.</p> <p>The Bill was first presented to Parliament on 5 September 2017 and is a Private Member's Bill, as such, information about its contents are limited at present.</p>	Watching Brief	The Bill will have its second reading in the House of Commons on 6 July 2018.	Criminal Fraud (Private Prosecutions) Bill 2017-19



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Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>The European Commission is proposing a new law to strengthen whistle-blower protection across the EU.</p> <p>The European Commission is proposing a new law to strengthen whistle-blower protection across the EU. The proposal was put forward on 23 April 2018 and will guarantee a high level of protection for whistle-blowers who report breaches of EU law by setting new EU wide standards.</p> <p>The new law aims to establish safe channels for reporting both within an organisation and to public authorities. It will protect whistle-blowers against dismissal, demotion and other forms of retaliation.</p>	Watching Brief	The proposal requires approval from EU countries and the European Parliament before it can become law.	Whistleblower protection: Commission sets new, EU-wide rules
<p>Combating fraud and counterfeiting of non-cash means of payment</p> <p>On 9 March 2018, the European Council adopted its position on a Directive on combating fraud and counterfeiting of non-cash means of payment.</p> <p>The new Directive includes provisions on expanding the scope of fraud offences to include transactions through virtual currencies; harmonising the definitions of some online crime offences; introducing minimum level for the highest penalties; clarifying the scope of jurisdiction to ensure cross border frauds are better dealt with, improving EU wide criminal justice cooperation and improving prevention and awareness-raising to reduce the risk of becoming a victim of fraud.</p>	Watching Brief	The proposed directive is awaiting the committee decision at this stage. Once the European Parliament has defined its position, negotiations will start with a view of reaching an agreement as soon as possible.	European Parliament/ Legislative Observatory Directive on combating fraud and counterfeiting of non-cash means of payment



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Medium term impact



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