

New legislative package of the EU Commission to combat money laundering

Among others, also the legal profession will face considerable changes in this area.

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Less than two years after the expiry of the transposition deadline for the fifth and so far last Money Laundering Directive, the EU Commission is once again dealing with a revision of the legal framework to combat money laundering and terrorist financing. The EU Commission already criticised the partially insufficient implementation of the fourth and fifth Money Laundering Directives as well as deficits in the enforcement of the regulations in the Action Plan for the Prevention of Money Laundering of May 2020. With the legislative package presented in July 2021, which consists of a total of four legislative proposals, the EU Commission now wants to set new standards. Without a doubt, this will lead to a considerable need for discussion, as the legal profession is also likely to be massively affected by some of the changes.

This is already shown by the proposal for a regulation to create an independent European money laundering supervisory authority. The authority is to be entrusted with direct supervisory powers in the financial sector. However, also in the non-financial sector, so-called money laundering obligated parties - e.g., lawyers - are to be subjected to indirect supervision by the authority in the case of certain catalogue activities being present. Specifically, national (state) bodies are to be established for this purpose, which to a certain extent will also take over the activities of the local bar associations as the competent supervisory authority according to § 50 No. 3 in conjunction with § 2 (1) No. 10. § Section 2 (1) No. 10 of the German Money Laundering Act (GwG). It is difficult to imagine to what extent this should be compatible with the position of the legal profession as an independent body of the administration of justice and the functional self-administration of the legal profession as laid down in § 1 BRAO (German law on the profession of lawyers).

According to the EU Commission, in the future, rules for those obliged to money laundering are to be laid down in a "unified set of rules", consisting of a Money Laundering Regulation and a Money Laundering Directive. The latter will then

replace the currently applicable money laundering directives. Exceptions to the protection of legal professional privilege, such as due diligence measures and the obligation to report suspicious transactions, will continue to apply and be directly binding for all member states in the regulation.

Generally, the EU Commission's efforts to combat money laundering and terrorist financing as effectively as possible deserve approval. However, one may ask whether the EU Commission draws towards a "one size fits all" – approach with its proposals and by doing so does not sufficiently take into account the particularities of individual sectors and professional groups such as the legal profession. In particular, the DAV will stand up for the basic principles of the legal profession in the upcoming legislative process. It is now up to the EU Parliament and Council to make the necessary changes to the proposals of the EU Commission.

Strengthening of victims' rights

Following a public consultation on the evaluation of the Victims' Rights Directive 2012/29/EU, which will run until 25 October 2021, the EU Commission will propose a report with possible amendments to the Directive. The focus will be on the effective protection of crime victims and on ensuring a safe but necessary participation in criminal proceedings. Based on the results of the report, the EU Commission plans to present a corresponding directive in 2022. In the past, several member states, including Germany, have already been reprimanded for inadequate implementation of the directive.

New attempt concerning data retention?

The EU Commission is currently examining various approaches for a unified EU-wide regulation on the retention of data. Both a legally non-binding recommendation to the member states and the drafting of its own legislative proposal are being considered. The previous case law of the ECJ on data retention is to be the basis for a possible European regulation. Retention of data is also being discussed in the current negotiations of the EU institutions on the proposal for an e-Privacy Regulation.

Mutual recognition of parenthood

The EU Commission is planning a legislative proposal on mutual recognition of parenthood in the EU. The reason for this is that, in the absence of existing European regulations, moving to another EU member state can be associated with considerable legal difficulties. In addition to biological parenthood, the regulation should also cover cases of adoption. The recognition of official documents (e.g., birth certificates) as well as of judicial findings of parenthood is considered. The corresponding legislative proposal is expected for the 2nd quarter of 2022.