



Monero Policy Working Group (MPWG)

[MoneroPolicy.org](https://MoneroPolicy.org)

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Response to Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on the prevention of the use of the financial system for the purposes of money laundering or  
terrorist financing

**Submitted by:** Monero Policy Working Group (MPWG)

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### **Introduction**

1. The Monero Policy Working Group (MPWG) is a loosely formed quorum of individuals that contribute to the Monero<sup>1</sup> open-source project. Monero is a permissionless, privacy-preserving cryptocurrency network. The goal of MPWG is to work with regulators, policy makers, and the wider financial services sector to ensure a broad understanding of Monero, and other privacy-preserving cryptocurrencies, is communicated. We have specific interest in interacting with entities so they may understand Monero's component technologies, especially in the context of evolving regulatory framework and compliance requirements.
2. We would like to take the opportunity to acknowledge the proposed package. It is far reaching and substantially developed, and we welcome the provisioned ability to respond to five concurrent public consultations on the matter.
3. We would also like to thank the Commission and DG-FISMA for the ample consultation time. It allows a multitude of stakeholders to provide opinion, perspective, and expertise on such intricate and wide-ranging legislative changes. Of course, the consultation phase also allows for due consideration of potential impacts, risks, and the weighing of proportionality and necessity as well as providing for a general level of transparency and accountability, fitting of the industry.
4. At a high level, we would like to first draw attention to the Impact Assessment accompanying the anti-money laundering package, and more specifically two elements that

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<sup>1</sup> see The Monero Project, <https://github.com/monero-project> and <https://getmonero.org>.

are worthy of due and careful consideration, especially in the light of the rationale proposed therein.

5. Within the Impact Assessment it is noted that mitigating anti-money laundering (AML) and countering the financing of terrorism (CFT) is seen as a matter of public interest, with a legal basis for processing personal data pursuant to Regulation 2016/679, Art. 6(1)(e). However, in the same Impact Assessment, it is noted that Member States have delayed in transposing both the 4th Anti-Money Laundering Directive (due for transposition in 2017) as well as the more recent 5th Anti-Money Laundering Directive (due for transposition in January 2020). With this in mind, it is not entirely clear how the Member States view the fitness of the said Directives. We believe that more attention should be provisioned to this discussion, and communicated in a clear manner - especially if this rationale is used as a component of the subsidiarity argument.
6. Further to the above, it is explicitly stated that due to transposition delays, the existing legislative frameworks (dating to the 4th Directive) have not had a sufficiently fair and proper evaluation conducted on them, nor have they had formal fitness tests conducted on them. It is somewhat surprising that DG-FISMA is disregarding elements of the Better Regulations process, and moving to provide a wide ranging anti-money laundering amendment package to the sector, given these procedural gaps in the policy making process.
7. While we agree that the actions of certain EU based banking organizations in 2019 have urged action on the matter of AML, it is yet unclear to us whether the proper legislative process has been followed. We question the legislative basis for the amendments, and the imposition of a European wide regulation when it would seem that some Member States have indirectly questioned the suitability of existing legislation; failing to transpose the already existing Directives.
8. We also like to draw attention to the fact that the amended Directive is forthcoming *before* the evaluation report has been conducted by the Commission. This evaluation report, which is due to consider (as stated in the Impact Assessment) on important subject matters such as "an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected."<sup>2</sup> We urge the Commission to deliver this evaluation immediately, especially as aspects of the interplay between privacy, data protection, and fundamental rights has been questioned by a number of established commentators - most notably the EDPB<sup>3</sup>, while others have drawn attention

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<sup>2</sup> COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the Anti-money laundering package, p.73

<sup>3</sup> EDPB letter to the European Commission on the protection of personal data in the AML-CFT legislative proposals, available at: [https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-commission-protection-personal-data-aml\\_en](https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-commission-protection-personal-data-aml_en)

towards matters concerning policy reform<sup>4</sup>, anti-money laundering<sup>5</sup>, payment services regulation<sup>6</sup>, and the advent of a digital Euro.<sup>7</sup>

9. We would also like to draw specific attention to certain sections of the Impact Assessment itself. Within Annex 3, a Summary of Cost and Benefits is provided. However, it is unclear to us the methodology used to aggregate evaluations. It is stated that “consistent supervision across the internal market and efficient exchange of information among FIUs is the main objective of the initiative.”<sup>8</sup> However, there are explicitly no direct, nor indirect, costs identified for the consumer/citizen in any of the dimensions provided in the cost table (*c.f.* pp. 70-71). This is especially surprising, as the same Impact Assessment indicates that 9% of received consultations responses were from citizens. Even more surprising, the same Impact Assessment (Section 7.3.3) has identified data protection, privacy, and impact on fundamental rights as explicit concerns. It is viewed by us as a procedural shortcoming that these dimensions of concern were not explicitly noted as potential (or explicit) indirect costs. We believe there should have been:

- a. A fair identification and appraisal of costs to the consumer/citizen - especially in the light of direct or indirect economic and social costs.
- b. A summary of the method used to identify costs to be published.

10. As a policy working group, we would also like to communicate our general support of the recently published European Data Protection Supervisor’s (EDPS) *Opinion 12/2021 on the anti-money laundering and counter terrorist financing of terrorism (AML/CFT) package of legislative proposals*.<sup>9</sup> The EDPS have made some extremely pertinent points regarding the evolving legislative framework - and we strongly urge the Commission to appraise their comments. We especially welcome consideration of their general suggestion to consider the concept of proportionality when suggesting wide-sweeping legislative changes. To further clarify, we would like to communicate our support for the following points as communicated by the EDPS:

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<sup>4</sup> Ronald F. Pol (2020) Anti-money laundering: The world's least effective policy experiment? Together, we can fix it, *Policy Design and Practice*, 3:1, 73-94, DOI: 10.1080/25741292.2020.1725366

<sup>5</sup> Österberg, L. (2019). *Anti-Money Laundering and the Right to Privacy: A Study of Potential Conflicts between the Processing of Bank Information to Fight Crime and the Protection of Personal Data*.

<sup>6</sup> European Data Protection Board, *Guidelines 06/2020 on the interplay of the Second Payment Services Directive and the GDPR, Version 2.0*, Adopted on 15 December 2020, available at: [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202006\\_psd2\\_afterpublicconsultation\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202006_psd2_afterpublicconsultation_en.pdf)

<sup>7</sup> European Data Protection Board letter to the European institutions on the privacy and data protection aspects of a possible digital euro - to the European Parliament, available at: [https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-institutions-privacy-and-data-0\\_en](https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-institutions-privacy-and-data-0_en)

<sup>8</sup> COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the Anti-money laundering package, p.70

<sup>9</sup> *Opinion 12/2021 on the anti-money laundering and counter terrorist financing of terrorism (AML/CFT) package of legislative proposals*, available at: [https://edps.europa.eu/data-protection/our-work/publications/opinions/anti-money-laundering-and-counter-terrorist-financing\\_en](https://edps.europa.eu/data-protection/our-work/publications/opinions/anti-money-laundering-and-counter-terrorist-financing_en)

- a. In reference to their request that specific data points for AML/CTF purposes be identified by the Commission - especially the data points expected to be collected and processed by obliged entities. This is especially important as evolving fraud mitigation technologies, methods and techniques are increasingly including invasive data points, such as GPS location monitoring, mobile phone log monitoring, social media network analysis, as well as behavioural analysis techniques based on data aggregation, analysis, and sharing - often including machine learning and artificial intelligence technologies, which in turn pose their own set of risks to the data subject.
- b. We also agree that the Anti-money Laundering Authority (AMLA) should clearly define what categories (and sub-categories) of data should be pursuant to appropriate due diligence efforts. This would more clearly indicate the types of data expected to be processed by obligated entities, would communicate whether special categories of data, such as biometrics will become commonplace in the market and, more importantly, be shared amongst Financial Investigative Units without investigation requests being required. This is of concrete concern to the data subject.
- c. We strongly support Paragraph 14 of the EDPS response - and urge the Commission to reword its legislative draft as requested.
- d. We support Paragraph 37 of the response, and would like to communicate strong support of the request of the EDPS to clarify the role of depth of powers of the FIUs. We agree that the appropriate protections should be put into place to ensure that the FIUs have 'investigatory' powers, and not 'intelligence-based' powers - as the latter (as communicated by the EDPS) is akin to persistent surveillance.
- e. We would like to communicate strong support for Paragraph 39 of the EDPS response - as laying down a storage limitation period would mitigate concerns regarding the use of immutable evidential registories (e.g., blockchain-based KYC registries) for AML or customer due diligence processes. This is especially relevant as the vast majority of AML/CFT data is deemed personal data - due to explicit relation to the entity identification.
- f. Paragraph 40 is of specific concern to the MPWG - and we welcome clarification as to what data sources would be required to fulfill specific AML/CFT obligations by obliged entities, or FIUs.
- g. We strongly support Paragraph 42 of the EDPS response, in which a risk-based approach is promoted - with higher risk entities being treated to higher due diligence requirements. This would ensure that ordinary citizens do not run the risk of having their data protection and privacy rights infringed for unnecessary or disproportionate purposes.
- h. We welcome the request for clarification of wording within Paragraphs 53, 56, and 57 of the EDPS opinion, to aid legal certainty and mitigate the risk of overt legal proceedings regarding such.

## **Preventing money laundering and terrorist financing – new rules for the private sector**

11. We would like to draw attention to Article 3, and more specifically the acknowledgment of 'crowdfunding services' as obliged entities, within Article 3, Paragraph 3, lit (h). The definition of crowdfunding services is somewhat opaque, as it is not clear what 'other' in this context means. Some clarification on this would be welcome, for legal certainty.
  
12. We feel that Article 5 requires consideration. The exclusion of remittances as defined by Article 4, point (22) of Directive (EU) 2015/2366, regardless of the amount or exemption purpose, would place a significant hidden cost on those who are the most vulnerable. This provides explicit illustration of a consumer/citizen localised indirect costs that has not been accounted for in the aforementioned impact assessment (Paragraph 9 of this response). As drafted, the Article allows Member States to make exemptions for certain activities, but does not mandate it. It would seem to us that clarity surrounding remittances, and their exemptions, is required. We feel this is an oversight that may disproportionately affect low income individuals. Migrants who send a substantial amount of their fairly earned wage to dependents would be required to shoulder the burden of regulatory cost, regardless of the amount sent. Coupled to this, the burden would be borne by those that are often found to be working in low income jobs. We feel that these low income groups should not be viewed as a significant AML/CFT risk - and so should not be targeted for specific AML/CFT policy. We urge the Commission to address this regulatory misalignment, as the proposed Regulation is highly discriminatory against those who are vulnerable or economically disadvantaged - as they may well be sending remittances to their home country exceeding the 5% turnover value. We feel that a more realistic figure could be over 50% of the turnover of the sender and up to 100% of the turnover of the recipient, especially if the recipient is in an underdeveloped or war torn country. The amounts could also be well under a 1.000 EUR threshold, over a 2 week period, due to the poverty of the individuals involved. We believe that, due to inflation, there is a significant risk that a 1.000 EUR threshold would be a significant burden for persons in extreme poverty. We urge the Commission to set an absolute threshold, and index it to inflation, under which there will be no regulatory burden. Remittances are a crucial component of migrant living, and sometimes a lifeline for those dependent family members. The AML/CFT policy should not become an explicit burden for low income or vulnerable groupings - especially if this was not the communicated intention.
  
13. We would like to provide our support for Article 55 of the Regulation - as it rightfully urges obliged entities to process data in compliance with existing European data protection regulations. As highlighted earlier in this document, we feel data protection regulation is a component of effective AML/CFT policy - and a crucial element of fair, balanced, and just policy implementation. This is especially relevant given the reliance by some AML/CFT analysis firms to implement compliance solutions that rely on the processing of publicly available transaction data, the

processing of potentially inaccurate transactional linkability data (based on probability), or combinations of meta-data with supplementary or aggregated data silos. An example of the above was provided in our previous response<sup>10</sup>, and we ask the Commission to fairly and properly consider our response moving forward, given the fundamental dangers some services have for fundamental data protection and privacy rights.

14. We believe that Article 54, Paragraph 1, should not apply where any of the requirements of Article 55 have not been followed. In particular the use of data from unreliable sources, inaccurate data, or out of date data. In such circumstances the customer must be promptly provided with a full disclosure of any actions or reporting, and also have full access to lines of recourse - following proper judicial procedure.

15. We would like to draw attention to Article 59, which sets upper limits on the value of cash transfers in most commercial activities of €10.000 - while also affording Member States the ability to lower that upper bound. We note that any fixed amount should be indexed to inflation. We would like to provide this as the second example (please see Paragraph 12 for first example) of a consumer/citizen localised indirect cost that has not been accounted for in the aforementioned impact assessment (Paragraph 9 of this response):

- a. Any further restrictions on cash, in our view, will add significant costs to consumers and citizens by further entrenching the antitrust monopolies of credit and debit card payments systems. This is especially the case for cards that are issued outside the EEA. The EU Interchange Fee Regulation – Regulation (EU) 2015/751<sup>11</sup> does not provide protection against Interchange Fees for card transactions with cards issued outside the EEA. Even within the EEA there remain significant exceptions such as scheme fees, commercial cards, etc.<sup>12</sup>
- b. We may consider the impact on cards issued outside the EEA with examples from Canada, the United States, South Africa and Russia. On the merchant side, interchange fees of 1.5%<sup>13</sup> together with scheme fees of 1.75% or higher<sup>14</sup> can push the total cost above 3.25%. On the consumer side, fees for currency exchange may also be substantial. These can be broken up between fees charged by the card provider and fees charged by the customer's bank.

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[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13152-Preventing-money-laundering-and-terrorist-financing-EU-rules-on-public-private-partnerships-PPPs-F2667485\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13152-Preventing-money-laundering-and-terrorist-financing-EU-rules-on-public-private-partnerships-PPPs-F2667485_en)

<sup>11</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (Text with EEA relevance),

<https://eur-lex.europa.eu/eli/reg/2015/751/oj>

<sup>12</sup>

<https://www.eurocommerce.eu/media/174609/EU%20Interchange%20Fee%20Regulation%20review%20-%20EuroCommerce%20submission%2003-Feb-2020.pdf>

<sup>13</sup> <https://www.bbc.com/news/business-55796426>

<sup>14</sup> <https://www.bambora.com/articles/the-transaction-economics-of-scheme-fees>

Here are some examples for the markup over the European Central Bank Rate charged by VISA to convert various currencies for a EUR payment: Canada (CAD) 0.48%, United States (USD) 0.23%, South Africa (ZAR) 1.4%, and Russia (RUB) 1.59%.<sup>15</sup>

- c. On top of this, the customer's bank may charge a foreign currency conversion fee. A typical rate in Canada is up to 2.5% (~3% total) for credit cards<sup>16</sup> and 3.5% (4% total) for debit cards.<sup>17</sup> In the United States, fees of 1% - 3% are typical. We consider aggregate fees of ~6.25% (3.25% on the merchant side and 3% on the customer side) typical for a CAD or USD card used in the EU. This would be relatively higher for a low net worth customer. By comparison it is possible to purchase EUR (cash) for under 1.25% above the mid market EUR/CAD rate in Canada. This would produce a difference in cost between card and cash payments of ~5%. One way to quantify this cost is to consider how much the VAT would have to be increased in order to create a similar cost. For a VAT rate of 20%, an increase of 6% to 26% would have a similar economic impact on visitors to the EU from outside the EEA.
- d. As illustrated these, identified direct and indirect costs affect the consumer and citizen from the proposed regulatory amendments - and will notably affect the travel, tourism, and international money transfers business. These industries are currently in need of support given the industry contagion burdened on them by the current pandemic term, and so careful consideration and assessment of these impacts should be considered.

16. Further to this, lowering the cash transaction limit requires a higher proportion of transactions to be conducted through the digital payments system - which comes with the associated transaction fees and processing costs. In our example above we have identified two significant costs. We believe there may be many more significant costs that we have not been able to identify with our limited resources. Often, fees for such are passed onto the consumer/citizen from retailers, as they do not wish to carry the burden of card or bank transfer processing costs. While we agree a move to place a limit on cash transactions may aid certain AML/CFT efforts, we believe this would come at a very significant cost (either indirect or direct) to the consumer - and so should be properly accounted for in the impact assessment previously conducted.

17. Further to this, we also feel that efforts to curb cash transactions disproportionately affects vulnerable groups and those on lower incomes. These groups are often the ones that are most dependent on the transactory medium of cash. We also question the overall logic of displacing the ability for these groups to move cash around the economy freely, in an effort to curb AML/CFT efforts - when the vast majority of AML/CFT crime originates within the relatively wealthy social groupings, and even from within the finance sector itself - as noted in the initial outline for these regulatory amendments. We urge the Commission to carefully consider this, as they weigh up the appropriateness of their efforts to amend legislation. This is especially

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<sup>15</sup> <https://usa.visa.com/support/consumer/travel-support/exchange-rate-calculator.html>.

<sup>16</sup> <https://www.cibc.com/en/personal-banking/credit-cards/articles/foreign-currency-credit-card.html>

<sup>17</sup> <https://www.tdcanadatrust.com/document/PDF/accounts/802234.pdf>

important as the original motive for the legislative amendment was to curb the mal-activity of certain financial institutions - not the financial activity of the vulnerable groupings of society.

### **Conclusion**

18. We welcome the openness and transparency with which these legislative amendments have been conducted. We also appreciate the extended windows that have been provided given the breadth of changes that have been proposed. However, we urge the Commission to consider the above points of matter and strongly recommend the conducting of a fair and proper impact assessment (Paragraph 9 of this response) inclusive of all costs associated with these proposed amendments. If there is an inability, or a lack of appetite, to consider both indirect and direct consumer/citizen costs in a fair and open manner, we propose tabling the wide-sweeping legislative change until this proper assessment is conducted.
19. Finally, we would like to thank you for the opportunity to respond to the European Commission's package of legislative proposals to strengthen the EU's anti-money laundering and countering the financing of terrorism (AML/CFT). We give consent for our contribution to be publicly published in full.