

Response to consultation on EC action plan for a comprehensive Union policy on preventing money laundering and terrorist financing

Our reference:	PERS-AML-20-027	Date:	29 July 2020
Referring to:			
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Pages:	8	Transparency Register ID no:	33213703459-54

### Ensuring effective implementation of the existing rules

How effective are the following existing EU tools to ensure application and enforcement of anti-money laundering / countering the financing of terrorism rules?

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
Infringement proceedings for failure to transpose EU law or incomplete /incorrect transposition	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Country-specific recommendations in the context of the European Semester	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Action following complaint by the public	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Breach of Union law investigations by the European Banking Authority	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New powers granted to the European Banking Authority	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How effective would more action at each of the following levels be to fight money laundering and terrorist financing?

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
At national level only	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At national level with financial support and guidance from the European Union	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At the level of the European Union (oversight and coordination of national action)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At international level	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No additional action at any level	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Should other tools be used by the EU to ensure effective implementation of the rules?

Effective implementation could benefit from the use of “real” tools, such as pan-European intelligence systems that would serve the financial intelligence units (FIUs) in member states. New regulation would be of limited impact whereas better use of intelligence and the creation of tools to allow the use of that information in public-private partnerships could make a difference. This could improve the effectiveness of beneficial ownership registers and FIUs, by increasing the level of interconnectedness and allowing better access to intelligence.

#### Additional comments

Regarding the first question on existing EU tools, it is simply too early to assess the effectiveness of the European Banking Authority’s (EBA) new mandate, especially in relation to the (life) insurance sector where little has happened so far.

However, Insurance Europe continues to be wary of this new mandate for a number of reasons:

- The allocation of cross-sector jurisdiction to the EBA challenges the foundation of the European system of financial supervision, which is based on a clear separation of tasks and competences between the European Supervisory Authorities (ESAs).
- This recently extended mandate ignores the vast differences between financial sectors in their exposure to ML/TF risks. While the banking sector is clearly more vulnerable to ML/TF, insurers’ business models and products do not lend themselves easily to such operations, as confirmed by the Commission’s own assessment. Insurance Europe is still wary of the risk the EBA will enforce a banking-related supervisory approach across all sectors, regardless of their specificities.
- The huge coordination efforts required between the EBA and the national supervisory authorities (NSAs), in terms of information, review and enforcement, may even complicate the work of the NSAs and potentially make it even less effective.

Regarding the second question, it is hard to express an opinion on the effectiveness of actions depending on the level without knowing the nature of the action taken, or the issues/loopholes which are meant to be addressed (rather than merely the level at which the action is taken). The answers given therefore rate the impact relative to each other.

### Delivering a reinforced rulebook

The Commission has identified a number of provisions that could be further harmonised through a future Regulation. Do you agree with the selection?

	Yes	No	Don't know
List of obliged entities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Structure and tasks of supervision	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Tasks of financial intelligence units	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Customer due diligence	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Electronic identification and verification	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Record keeping	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Internal controls	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Reporting obligations	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Beneficial ownership registers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Central bank account registers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Ceiling for large cash payments	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Freezing powers for financial intelligence units	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Sanctions	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

What other provisions should be harmonised through a Regulation?

No answer.

What provisions should remain in the Directive due to EU Treaty provisions?

No answer.

What areas where Member States have adopted additional rules should continue to be regulated at national level?

It is essential for member states to be able to continue to adapt rules to the specificities of their markets, in light of locally known risks, products, services and legal structures and obligations. However, these specificities should be the only reason for member states to maintain a wider scope of obliged entities, activities or other additional requirements. Otherwise, they generate excessive constraints and competitiveness problems for companies and prevent a level-playing field in the EU

Should new economic operators (e.g. crowdfunding platforms) be added to the list of obliged entities?

No answer.

In your opinion, are there any FinTech activities that currently pose money laundering / terrorism financing risks and are not captured by the existing EU framework? Please explain

No answer.

The Commission has identified that the consistency of a number of other EU rules with anti-money laundering / countering the financing of terrorism rules might need to be further enhanced or clarified through guidance or legislative changes. Do you agree?

	Yes	No	Don't know
Obligation for prudential supervisors to share information with anti-money laundering supervisors	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bank Recovery and Resolution Directive (Directive 2014/59/EU) or normal insolvency proceedings: whether and under what circumstances anti-money laundering grounds can provide valid grounds to trigger the resolution or winding up of a credit institution	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Deposit Guarantee Schemes Directive (Directive 2014/49/EU): customer assessment prior to pay-out	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Payment Accounts Directive (Directive 2014/92/EU): need to ensure the general right to basic account without weakening anti-money laundering rules in suspicious cases	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Categories of payment service providers subject to anti-money laundering rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Integration of strict anti-money laundering requirements in fit&proper tests	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Are there other EU rules that should be aligned with anti-money laundering / countering the financing of terrorism rules?

No answer

**Additional comments**

The main issue with the proposed single EU rulebook is that, while it takes its starting point from the banking sector, it would apply to a range of different actors (obliged entities) and to diverse fields of activity. Rules devised for the banking sector simply cannot and should not be applied to the insurance sector, which is intrinsically different in nature, as well as in level of ML/TF risk (very low). The fact issues are found to have arisen in the banking sector from the lack of harmonisation of certain provisions does not mean these provisions should also be harmonised for other financial sectors.

Moreover, further harmonisation may not be the solution when the issue is related to the provision itself and /or its implementation. Indeed, the current provisions in the AML Directive on the Beneficial Ownership register have proved very unhelpful. Whilst intended to facilitate the validation of (Ultimate) Beneficial Ownership, they have ended up just being an additional administrative burden and cost for insurers. Indeed, since checking such registers is not deemed enough to discharge the relevant AML/CFT obligations (even in low risk scenarios), the register ends up complicating the process by adding an unnecessary layer. The focus should therefore rather be on facilitating the interconnection between

these registers as well as with commercial and company registers, and ensuring the rules for reporting to and requesting information from beneficial ownership registers really achieve the original aim of these registers.

Further harmonisation can be envisaged for some areas but only to a certain extent. Regarding the list of obliged entities for example, non-life insurance should remain firmly out of the scope of EU regulation. This is not only to ensure consistency with the Financial Action Task Force (FATF) recommendations on which the EU framework is partly based, but also in line with the Commission's assessment that non-life insurance represents a very low risk of ML/TF, which is non-existent if fraud is taken out of the equation.

The Action Plan envisages harmonisation to enable the use of digital identification for remote customer identification and verification of customer identity as well as to establish business relationships remotely. Whilst this could help given the considerable degree of legal uncertainty around these methods of digital identification, any initiative should focus on clarifying options, rather than imposing a minimum standard, as obliged entities make use of digital technology to a different extent.

The effectiveness of FIUs could also be enhanced through a more consistent framework, with a particular emphasis on binding governance requirements.

However, any proposal to harmonise aspects of the AML Directive should be consistent with the Risk-Based Approach which underpins the whole AML/CFT framework. This would preclude harmonisation of provisions such as customer due diligence requirements, internal controls and reporting obligations.

Any proposal must also take into account the differences between sectors but also between markets. Insurance markets differ within the EU by providing solutions adapted to varying national legal and social contexts. AML legislation should reflect such differences. A single EU rulebook would most likely result in a more detailed legislation at EU level, leaving less room for member states to take these differences between sectors and markets into account.

If the Commission is to take aspects of the AML Directive and include them in a Regulation, it should provide more substantial information to support these moves. This means providing concrete examples of how the diverging approaches in member states on a given point have created issues in AML/CFT compliance, the provision of cross-border services and cooperation between national competent authorities.

In any event, while this approach could indeed foster a regulatory level-playing field throughout the EU, it cannot guarantee a "zero failure" scenario. Based on the information available, it is not clear whether recent AML failures were the result of legal ambiguities/diverging implementations of the AMLD, or individual misconduct instead.

It is essential for the Commission to take into account the different AML/CTF risk exposure of obliged entities. In this respect, Insurance Europe welcomes the Commission's commitment to keep additional financial and administrative burdens for member states and obliged entities to a minimum, and to continue following the risk-based approach.

Finally, the provisions of a potential regulation should necessarily be considered together with the scope and powers of a potential EU-level supervisor (considered in the next section).

## Bringing about EU-level supervision

What entities/sectors should fall within the scope of EU supervision for compliance with anti-money laundering / countering the financing of terrorism rules?

- All obliged entities/sectors
- All obliged entities/sectors, but through a gradual process
- Financial institutions
- Credit institutions

What powers should the EU supervisor have?

- Indirect powers over all obliged entities, with the possibility to directly intervene in justified cases
- Indirect powers over some obliged entities, with the possibility to directly intervene in justified cases
- Direct powers over all obliged entities
- Direct powers only over some obliged entities
- A mix of direct and indirect powers, depending on the sector/entities

Which body should exercise these supervisory powers?

- The European Banking Authority A new EU centralised agency
- A body with a hybrid structure (central decision-making and decentralised implementation)
- Other

If other: please explain

Regardless of which body is entrusted with EU-level supervisory powers, it must have the necessary skills and expertise to supervise the entities within its jurisdiction. The business models of obliged entities and their exposure to ML/TF risks are very diverse and, as explained earlier, Insurance Europe is still wary of a banking institution such as the EBA supervising the insurance sector

### Additional comments

The allocation of supervisory powers to EU authorities must be measured against the subsidiarity principle, and only if the objectives of AML/CTF supervision cannot be sufficiently (or even best) achieved by the national supervisors. The legal basis for including all obliged entities under the scope of an EU-level supervisor irrespective of their exposure to ML/TF risks is therefore questionable. The time and effort required to set up such a structure can also seem disproportionate when related to the ML/TF risks represented by sectors such as insurance.

Recent problems that have led to this Action Plan were virtually all related to the banking sector. It would therefore make more sense for any new authority or new powers given to an existing authority to be focused on the banking sector as a whole, or to certain significant credit institutions. If other financial and non- financial institutions are to be included, then this must reflect their exposure to ML/TF risks. As mentioned earlier, the Commission as well as the FATF have consistently affirmed the low risk represented by the insurance sector.

Regarding the proposal for an EU supervisory body with direct powers, the important role played by national supervisors should be highlighted, as they are generally better placed to know and understand their home markets. In addition to having local expertise, they are also in direct contact with the entities within their jurisdiction. Where a given supervisor has failed, this should be taken up with it rather than lead to the creation of a new authority, with EU-wide jurisdiction. Insurance Europe would strongly oppose the proposal to fund the activities of an EU supervisor by contributions from the obliged entities, since they would not be able to oversee this supervisor's budgetary transparency and discipline. In this respect, we should point out that a proposal for this type of industry funding was recently rejected in the ESAs Review.

## Establishing a coordination and support mechanism for financial intelligence units

Financial intelligence units (FIUs) play a key role in the detection of money laundering and identification of new

Which of the following tasks should be given to the coordination and support mechanism?

- Developing draft common templates to report suspicious transactions
- Issuing guidance
- Developing manuals
- Assessing trends in money laundering and terrorist financing across the EU and identify common elements
- Facilitating joint analyses of cross-border cases
- Building capacity through new IT tools
- Hosting the FIU.net

Which body should host this coordination and support mechanism?

- The FIU Platform, turned into a formal committee involved in adopting Commission binding acts
- Europol, based on a revised mandate A new dedicated EU body
- The future EU AML/CFT supervisor
- A formal Network of financial intelligence units

### Additional comments

Insurance Europe supports the envisaged measures to optimise the functioning of FIUs, in particular regarding the feedback requirement.

Indeed, Insurance Europe agrees with the Commission's finding that obliged entities lack substantial feedback in relation to their reporting. There should be a clear requirement for FIUs to submit feedback that helps obliged entities to enhance their AML/CFT procedures. Statistical information unrelated to specific cases do not provide added value in this regard.

Moreover, the reporting process should be designed as simply and efficiently as possible. The filling in of the templates offered so far is onerous and time consuming. The exhaustive level of detail seems to serve organisational needs of the FIUs rather than contributing to a swift processing of relevant information.

However, there are still a number of aspects which are not clear around the new IT tools mentioned or turning the FIU Platform into a formal committee. It is difficult to support such measures without a clear idea of the features and the cost of such initiatives.

## Enforcement of EU criminal law provisions and information exchange

What actions are needed to facilitate the development of public-private partnerships?

- Put in place more specific rules on the obligation for financial intelligence units to provide feedback to obliged entities
- Regulate the functioning of public-private partnerships
- Issue guidance on the application of rules with respect to public-private partnerships (e.g. antitrust)
- Promote sharing of good practices

### Additional comments

Setting up PPPs could indeed be helpful to help with AML/CFT.

**Strengthening the EU's global role**

How effective are the following actions to raise the EU's global role in fighting money laundering and terrorist financing?

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
Give the Commission the task of representing the European Union in the FATF	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Push for FATF standards to align to EU ones whenever the EU is more advanced (e.g. information on beneficial ownership)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Additional comments**

Should the Commission eventually represent the EU in the FATF, the expertise of member states' authorities would still be necessary. This should therefore be governed by an open and transparent coordination process.

Aligning FATF standards with the European rulebook could indeed be beneficial, especially the FATF listing process for high risk countries. This would not only foster a regulatory level-playing field but also relieve obliged entities from compliance challenges arising from different treatment of AML/CFT risks and requirements between the European and international level.

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