



25th August 2020

Attn Raluca Pruna
DG FISMA
European Commission
1049 Bruxelles
Belgium

Dear Ms Pruna,

The PwC International Ltd (PwC), on behalf of the PwC network, welcomes the opportunity to respond to the consultation on the action plan for a comprehensive Union policy on preventing money laundering and terrorist financing. Please note that for the purpose of this response, we refer to anti-financial crime (AFC) which covers both money laundering and terrorist financing.

Legislative framework and guidelines

PwC supports a coherent and consistent international anti-financial crime regime. The current legislation has been written for financial institutions (FS), in particular banks, and by default has been extended to non-financial obliged entities. This has created uncertainty about interpretation. We would recommend that harmonised guidance is made available for FS entities as well as non-financial obliged entities, taking into account sector specific features. Different business models, relationships with customers and functions in the system entail different risks, hence inherent specificities should be reflected. More clarity on the procedures to follow (e.g. in relation to alert handling and KYC) and on information that obliged entities are expected to obtain and share with authorities will simplify collaboration.

Oversight and enforcement

With regard to centralising oversight, it will be important to strike the right balance: a supervisor that is too distant from the market is likely to miss important details, which can derive from the proximity to national law enforcement and market community. A critical success factor will be

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ensuring that supervisors are well equipped with financial, human and IT resources as well as appropriate powers in terms of access to information. The mandate recently given to the European Banking Authority to lead, coordinate and monitor AFC is a positive step towards regulatory consistency for financial institutions and payment operators. In addition, a new EU-level entity could be tasked with setting standards and monitoring national regulators for non-FS entities.

Beneficial ownership registers are not yet fully implemented in several EU countries, and do not provide the right value for resources invested. The register would be more effective if recording requirements were to be harmonised with specific guidelines and if the due diligence procedures would result in more reliable information, if verified by public authorities.

Appropriate oversight of non-financial entities, including internal controls, is necessary to reduce the possibility for criminal proceeds to infiltrate the financial system via companies' books. Provision of consistent and transparent reporting and assurance on internal controls and implementation of a sound compliance risk management system will make the system more resilient and increase the ability of supervisors to focus their resources on the right priorities.

Rules addressing inherently high risk operations, such as large cash transactions (for money laundering, but also for tax evasion), can be a cost effective way to make life more difficult for criminals. A prohibition on cash transactions above a threshold of for instance € 1000 would be easier to apply and to monitor than the current complex rules. A ceiling on cash payments has proven effective in Italy and Belgium, and it is proposed in the Netherlands. It could be harmonised at EU level and would be a powerful measure.

Reporting obligations

On the subject of reporting obligations and materiality of such reporting, we would like to put forward that from an AFC / pursuing proceeds of crime objective, any information is helpful to criminal authorities in investigating AFC across borders. So a single piece of information may fit into a much larger jigsaw of information that multiple investigators are following across jurisdictions. Having said this, it is important that authorities give feedback on the reports, so that obliged entities can constantly improve and refine their reporting mechanisms.

We would invite the Commission to consider ways of expanding AFC reporting obligations to governmental agencies, and thus use the information governments and their institutions have but which does not reach the FIUs. Clarification and simplification of the privacy rules applicable to data sharing for purposes of financial crime monitoring would also be useful.



Platforms used by authorities to receive reports of suspicious activities could be made more user friendly for obliged entities and harmonised around a single standard and interoperable across the EU.

Technology

Technology can be a great ally in the fight against money laundering. Regulatory certainty will be important for firms to invest the necessary resources into developing innovative systems. The eIDAS Regulation, if expanded to the private sector, could offer a safe digital ID solution that has been validated by national authorities, which would also facilitate digital cross-border due diligence. A similar digital identification system could be explored for legal entities.

Corporate governance and the role of the auditor

Corporate governance is an important preventive factor against financial crime, especially in high risk sectors. Companies' management could also be required to improve or establish internal control systems to prevent and detect financial crime, including company-wide risk assessments and proportionate mitigating measures. Companies' boards would be responsible for overseeing the implementation of such control systems. Under these conditions, auditors could provide assurance over the effectiveness of such controls. Currently, management's and board's responsibilities on AFC are not explicit. For the non-FS sector, auditors' room for action is limited to non-compliance with laws and regulations which have direct material impact on the financial statements.

Outside of this, there remain many obliged entities which are not subject to audit of financial statements requirements. For such entities, no monitoring of design or operating effectiveness takes place from an auditing perspective.

Some jurisdictions, such as Germany and Luxembourg, have requirements whereby auditors are requested to perform specific and detailed audit work on AFC for banking clients and other regulated financial institutions, which is reported to national financial regulators. This ensures that internal controls are consistently checked. The EU AML directive prescribes policies, controls and procedures and an independent audit function appropriate to the size and the nature of the business of obliged entities of financial institutions and others in scope. If this option is pursued under the EU framework, clearly defining the role of the auditor and its responsibility will be key. For such compliance monitoring to become an effective tool, it is important to ensure



the required skills are developed, and that requirements are consistent at EU level. Furthermore, a feedback loop of data and insights would help regulators improve their practices.

By way of conclusion, we would like to mention that national governments remain the sole legitimate authority to fight crime and enforce the law. A broader set of policies, other than purely focus on regulatory action directed at the financial system, is needed to weaken international organised crime and make communities safe. Action to secure the financial system needs to be accompanied not only by adequate investments into better intelligence and law enforcement, including appropriate checks and balances, but also proportional investments into social policy to improve inclusion in areas suffering situations of economic inequality and a large presence of organised crime. Furthermore, support for building governance capabilities in developing countries will reduce possibilities for organised crime to find safe harbors in which to thrive.

We would be happy to discuss this further with you. If you have any questions regarding our response please contact Michael Weis at michael.weis@pwc.com or Oliver Eis at oliver.eis@pwc.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Stewart'.

Michael Stewart
Global Leader, Corporate Affairs and Communications

PwC IL is registered under number 60402754518-05 in the EU Transparency Register

Public consultation on an action plan for a comprehensive Union policy on preventing money laundering and terrorist financing

Fields marked with * are mandatory.

Introduction

This consultation is now available in 23 European Union official languages.

Please use the language selector at the top of this page to choose your language for this consultation.

As highlighted in President's von der Leyen guidelines for the new Commission, the complexity and sophistication of the Union's financial system has opened the door to new risks of money laundering and terrorist financing. The European Union needs to step up its regulatory framework and preventive architecture to ensure that no loopholes or weak links in the internal market allow criminals to use the EU to launder the proceeds of their illicit activities.

The Action Plan adopted on 7 May 2020 by the Commission sets out the steps to be taken to deliver on this ambitious agenda, from better enforcement of existing rules to revision of the anti-money laundering /countering the financing of terrorism rules, to an overhaul of the EU's supervisory and enforcement architecture.

While recent money laundering scandals have created a sense of urgency to act, the Commission is determined to ensure that such action is comprehensive and delivers a future-proof framework that will effectively protect the Union's financial and economic system from criminal money and that will strengthen the EU's role as a world leader in the fight against money laundering and terrorist financing.

This public consultation aims to gather stakeholder views on the actions that the Commission has identified as priority in its action plan and in view of preparing potential future initiatives to strengthen the EU's anti-money laundering / countering the financing of terrorism framework.

About this consultation

In line with Better Regulation principles, the Commission has decided to launch a public consultation to gather stakeholder views on the possible enhancements to the EU anti-money laundering/countering the financing of terrorism framework. This consultation contains separate sections. You can choose to answer only one, several or all sections, depending on your interest and knowledge.

The first section aims to collect stakeholder views regarding actions already undertaken at EU level to strengthen the application and enforcement of the EU anti-money laundering / countering the financing of terrorism framework, and how each of them could be strengthened.

The second section seeks views regarding the current EU legal framework, what areas should be further harmonised and what should be left to Member States to regulate. Feedback is also sought on the need to improve consistency with other related legislation is also raised for feedback.

The third section aims to capture views from all stakeholders on a revised supervisory architecture. Stakeholders are invited to react on scope, structure and powers that should be granted to an EU-level supervisor and how it should interact with national supervisors.

The fourth section looks for input from stakeholders on the actions that can help to strengthen the provision and relevance of financial intelligence, and in particular on the possibility to set up a support and coordination mechanism for financial intelligence units across the EU.

The fifth section seeks stakeholder views with regard to the enforcement actions and the development of partnerships between public authorities and the private sector to ensure that, when money laundering has not been prevented, it can at least be detected and suppressed.

The sixth section aims to receive views from the stakeholders on the actions that the EU should take at international level and with regard to non-EU countries to strengthen its global role in the fight against money laundering and terrorism financing.

Responding to the full questionnaire should take 25 minutes.

Important notice

Contributions received are intended for publication "as submitted" on the Commission's websites. In the next section, you have the possibility to indicate whether you agree to the publication of your individual responses under your name or anonymously. In addition to answering the questions, you may upload a brief document (e.g. a position paper) at the end of the questionnaire. The document can be in any official EU language.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-crime@ec.europa.eu.

More information:

- [on this consultation](#)

- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ Gaelic
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* I am giving my contribution as

- ☐ Academic/research institution

- ☐ Business association
- ☒ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

* First name

Jacomien

* Surname

van den Hurk

* Email (this won't be published)

jacomien.van.den.hurk@pwc.com

* Organisation name

255 character(s) maximum

PwC IL

* Organisation size

- ☐ Micro (1 to 9 employees)
- ☐ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☒ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

60402754518-05

* Country of origin

Please add your country of origin, or that of your organisation.

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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
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| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |
| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Georgia and the South Sandwich Islands |
| <input type="radio"/> Barbados | <input type="radio"/> Gabon | <input type="radio"/> Monaco | <input type="radio"/> South Korea |
| <input type="radio"/> Belarus | <input type="radio"/> Georgia | <input type="radio"/> Mongolia | <input type="radio"/> South Sudan |

<input checked="" type="radio"/> Belgium	<input type="radio"/> Germany	<input type="radio"/> Montenegro	<input type="radio"/> Spain
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<input type="radio"/> Bermuda	<input type="radio"/> Greece	<input type="radio"/> Mozambique	<input type="radio"/> Suriname
<input type="radio"/> Bhutan	<input type="radio"/> Greenland	<input type="radio"/> Myanmar /Burma	<input type="radio"/> Svalbard and Jan Mayen
<input type="radio"/> Bolivia	<input type="radio"/> Grenada	<input type="radio"/> Namibia	<input type="radio"/> Sweden
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<input type="radio"/> Brazil	<input type="radio"/> Guinea	<input type="radio"/> New Zealand	<input type="radio"/> Tanzania
<input type="radio"/> British Indian Ocean Territory	<input type="radio"/> Guinea-Bissau	<input type="radio"/> Nicaragua	<input type="radio"/> Thailand
<input type="radio"/> British Virgin Islands	<input type="radio"/> Guyana	<input type="radio"/> Niger	<input type="radio"/> The Gambia
<input type="radio"/> Brunei	<input type="radio"/> Haiti	<input type="radio"/> Nigeria	<input type="radio"/> Timor-Leste
<input type="radio"/> Bulgaria	<input type="radio"/> Heard Island and McDonald Islands	<input type="radio"/> Niue	<input type="radio"/> Togo
<input type="radio"/> Burkina Faso	<input type="radio"/> Honduras	<input type="radio"/> Norfolk Island	<input type="radio"/> Tokelau
<input type="radio"/> Burundi	<input type="radio"/> Hong Kong	<input type="radio"/> Northern Mariana Islands	<input type="radio"/> Tonga
<input type="radio"/> Cambodia	<input type="radio"/> Hungary	<input type="radio"/> North Korea	<input type="radio"/> Trinidad and Tobago
<input type="radio"/> Cameroon	<input type="radio"/> Iceland	<input type="radio"/> North Macedonia	<input type="radio"/> Tunisia
<input type="radio"/> Canada	<input type="radio"/> India	<input type="radio"/> Norway	<input type="radio"/> Turkey
<input type="radio"/> Cape Verde	<input type="radio"/> Indonesia	<input type="radio"/> Oman	<input type="radio"/> Turkmenistan
<input type="radio"/> Cayman Islands	<input type="radio"/> Iran	<input type="radio"/> Pakistan	<input type="radio"/> Turks and Caicos Islands
<input type="radio"/>	<input type="radio"/> Iraq	<input type="radio"/> Palau	<input type="radio"/> Tuvalu

Central African
Republic

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| <input type="radio"/> Chad | <input type="radio"/> Ireland | <input type="radio"/> Palestine | <input type="radio"/> Uganda |
| <input type="radio"/> Chile | <input type="radio"/> Isle of Man | <input type="radio"/> Panama | <input type="radio"/> Ukraine |
| <input type="radio"/> China | <input type="radio"/> Israel | <input type="radio"/> Papua New Guinea | <input type="radio"/> United Arab Emirates |
| <input type="radio"/> Christmas Island | <input type="radio"/> Italy | <input type="radio"/> Paraguay | <input type="radio"/> United Kingdom |
| <input type="radio"/> Clipperton | <input type="radio"/> Jamaica | <input type="radio"/> Peru | <input type="radio"/> United States |
| <input type="radio"/> Cocos (Keeling) Islands | <input type="radio"/> Japan | <input type="radio"/> Philippines | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Pitcairn Islands | <input type="radio"/> Uruguay |
| <input type="radio"/> Comoros | <input type="radio"/> Jordan | <input type="radio"/> Poland | <input type="radio"/> US Virgin Islands |
| <input type="radio"/> Congo | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal | <input type="radio"/> Uzbekistan |
| <input type="radio"/> Cook Islands | <input type="radio"/> Kenya | <input type="radio"/> Puerto Rico | <input type="radio"/> Vanuatu |
| <input type="radio"/> Costa Rica | <input type="radio"/> Kiribati | <input type="radio"/> Qatar | <input type="radio"/> Vatican City |
| <input type="radio"/> Côte d'Ivoire | <input type="radio"/> Kosovo | <input type="radio"/> Réunion | <input type="radio"/> Venezuela |
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| <input type="radio"/> Cuba | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao | <input type="radio"/> Laos | <input type="radio"/> Rwanda | <input type="radio"/> Western Sahara |
| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

at least 1 choice(s)

- ☒ Accounting
- ☐ Art dealing
- ☒ Auditing
- ☐ Banking
- ☐ Company and trust creation and management
- ☐ Consulting
- ☐ Gambling
- ☐ Insurance
- ☐ Investment management (e.g. assets, securities)
- ☐ Other company and trust services
- ☐ Other financial services
- ☐ Notary services
- ☒ Legal services
- ☐ Pension provision
- ☐ Real estate
- ☒ Tax advice
- ☐ Think tank
- ☐ Trading in goods
- ☐ Virtual assets
- ☐ Other
- ☐ Not applicable

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

☐ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

☒ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ I agree with the [personal data protection provisions](#)

Ensuring effective implementation of the existing rules

Ensuring correct transposition and application of the EU anti-money laundering / countering the financing of terrorism rules is a priority for the Commission. The Commission adopted a tough approach in relation to the transposition of both the 4th and 5th Anti-Money Laundering Directives and launched or will soon launch infringement proceedings against Member States for failure to fully transpose these provisions.

The Commission monitors the effectiveness of Member States' anti-money laundering / countering the financing of terrorism frameworks in the context of the European Semester cycle. In 2020, 11 countries have seen their frameworks assessed.

The European Banking Authority has seen its mandate recently strengthened, and is now responsible to lead, coordinate and monitor AML/CFT efforts in the financial sector. Among its new powers are the performance of risk assessments on competent authorities, the right to request national authorities to investigate individual institutions and adopt measures when breaches are detected. These new powers complement existing powers to investigate potential breaches of Union law.

This section aims to collect stakeholder views regarding the effectiveness of these measures and on whether other measures could contribute to strengthening the enforcement of anti-money laundering / countering the financing of terrorism 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Country-specific recommendations in the context of the European Semester	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Action following complaint by the public	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In addition to diligence required by audit standards, some jurisdictions, like Germany and Luxembourg, have specific requirements whereby auditors are requested to perform specific audit work on AML for banking clients, which is reported to national financial regulators. This ensures that internal controls are consistently checked. If this option is pursued under the EU framework, a clear scope for the role of the auditor and its responsibility will be key. For such compliance monitoring to become an effective tool, it is important to ensure the required skills are developed, and that requirements are consistent at EU level. This might also be an instrument to expand AML controls to the non-financial sector. Furthermore, a feedback loop of data and insights would help regulators improve their practices.

For effective implementation of the rules, the international element will need to be considered since significant threats to the EU financial system also come from criminals outside the EU. Measures similar to the US Foreign Account Tax Compliance Act (FATCA) may help in deterring threats from countries outside the EU, keeping the risk-based approach in mind.

Beneficial ownership registers are not yet fully implemented in several EU countries, and do not provide the right value for resources invested. The register would be more effective if recording requirements were harmonised with specific guidelines and if the due diligence procedures drove more reliable information.

Rules addressing inherently high risk operations, such as large cash transactions (for money laundering, but also for tax evasion), can be a cost effective way to make life more difficult for criminals. A prohibition on cash transactions above a threshold of for instance € 1000 would be easier to apply and to monitor than the current complex rules. A ceiling on cash payments has proven effective in Italy and is proposed in the Netherlands. It could be harmonised at EU level and would be a powerful measure.

Financial fines remain a key deterrent, as with all criminal laws. Governments should ensure criminal law sanctions are effectively enforced against money launderers and criminal assets are efficiently seized and disposed of by authorities. The responsibility of management to put appropriate AML controls in place should also be monitored, enforced and sanctioned in a proportionate manner.

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For obliged entities to be able to refine and steadily improve their reporting mechanism, it is important that authorities give feedback on the reports, albeit in a way that safeguards individual rights and the confidentiality of investigations. Information sharing between obliged entities would also be important to prevent criminals from exploiting lack of coordination in the financial system. A clarification and simplification of the privacy rules applicable to data sharing for purposes of financial crime monitoring would be useful.

Reporting tools currently do not provide a suitable user experience and do not encourage cooperation. Platforms used by authorities to receive reports of suspicious activities should be easy to use as well as harmonised around a single standard, and should be interoperable across the EU.

We would also invite the Commission to consider ways of expanding AML reporting obligations to governmental agencies, to widen the net and use the information governments and their institutions have but which does not reach the FIUs.

Delivering a reinforced rulebook

While the current EU legal framework is far-reaching, its minimum harmonisation approach results in diverging implementation among Member States and the imposition of additional rules at national level (e.g. list of entities subject to anti-money laundering obligations, ceilings for large cash payments). This fragmented legislative landscape affects the provision of cross-border services and limits cooperation among competent authorities. To remedy these weaknesses, some parts of the existing legal framework might be further harmonised and become part of a future Regulation. Other Union rules might also need to be amended or clarified to create better synergies with the AML/CFT framework.

As criminals continuously look for new channels to launder the proceeds of their illicit activities, new businesses might become exposed to money laundering / terrorist financing risks. In order to align with international standards, virtual asset service providers might need to be added among the entities subject to anti-money laundering / countering the financing of terrorism rules (the 'obliged entities'). Other sectors might also need to be included among the obliged entities to ensure that they take adequate preventive measures against money laundering and terrorism financing (e.g. crowdfunding platforms).

This section aims to gather stakeholder views regarding a) what provisions would need to be further harmonised, b) what other EU rules would need to be reviewed or clarified and c) whether the list of entities subject to preventive obligations should be expanded.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Structure and tasks of supervision	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tasks of financial intelligence units	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Customer due diligence	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Electronic identification and verification	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Record keeping	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Internal controls	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reporting obligations	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Beneficial ownership registers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Central bank account registers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ceiling for large cash payments	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Freezing powers for financial intelligence units	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sanctions	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

What other provisions should be harmonised through a Regulation?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In principle, the market would welcome harmonisation of rules and procedures, to the extent that it would simplify and streamline compliance. At the same time, for enforcement to be effective it is important that harmonisation of rules enables a clear link and effective line of communication between different public administrations and public entities involved. The future Regulation should therefore avoid taking a siloed view and include statutory information sharing between Member States. Harmonised rules must also pay due attention to avoiding a one-size-fits-all approach.

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Organised crime has proven to be fast in learning how to use new technologies, including for laundering the proceeds of crime and contaminating the economy. Regulation will necessarily have to follow innovations in money laundering techniques, also making use of insights provided by forensic experts.

The “same service, same risk, same regulation” principle should guide authorities in deciding which requirements should also be applicable in a proportional way to new technologies.

With specific regard to crypto-assets/stablecoins, controls at the platform level, where crypto assets can be converted into fiat currency or goods/services, are the only point where supervision can be exerted. The designation of crypto exchanges as obliged entities under the AMLD5 has recently become applicable, and experience should be drawn from the implementation.

Technology can be a great ally in the fight against money laundering. Regulatory certainty will be important for firms to invest the necessary resources into developing innovative systems. Furthermore, encrypted communications will allow increasingly sophisticated and safe systems for private entities to collaborate with public authorities. Finally, the eIDAS Regulation, if expanded to the private sector, would offer a safe digital ID solution that has also been validated by national authorities. This would also facilitate creating a mechanism for digital cross-border ID checks in KYC procedures.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Deposit Guarantee Schemes Directive (Directive 2014/49/EU): customer assessment prior to pay-out	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
Categories of payment service providers subject to anti-money laundering rules	<input type="radio"/>	<input checked="" type="radio"/>	<input 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?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Other important pieces of the legislative framework have not yet become applicable, but their effective and consistent implementation will be key to success. In particular we invite the Commission to pay close attention to the implementation of Directive 2019/1153 on the use of financial and other information to combat serious crimes, as well as Regulation 2018/1805 on the mutual recognition of freezing and confiscation orders. Furthermore, the delay in implementation of the AMLD5 in several countries needs to be addressed, along with clear guidance and support for the relevant National Competent Authorities.

Many stakeholders raise concerns about balancing the risk of infringing the General Data Protection Regulation and the need to monitor transactions and inform authorities. The European Data Protection Board should issue clear guidance on the legal basis for lawful data processing in this context e.g. by clarifying that the obliged entity is performing a task in the public interest by processing certain data without the consent of its customers.

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current legislation has been written for financial institutions (FS), in particular banks, and by default has been extended to non-financial obliged entities. This has created uncertainty about interpretation. We would recommend that harmonised guidance is made available for FS entities as well as non-financial obliged entities, taking into account sector specific features. Different business models, relationships with customers and functions in the system entail different risks, hence inherent specificities should be reflected. More clarity on the procedures to follow (e.g. in relation to alert handling and KYC) and on information that obliged entities are expected to obtain and share with authorities will simplify collaboration.

Bringing about EU-level supervision

Supervision is the cornerstone of an effective anti-money laundering / countering the financing of terrorism framework. Recent money laundering cases in the EU point to significant shortcomings in the supervision of both financial and non-financial entities. A clear weakness is the current design of the supervisory framework, which is Member-State based. However, supervisory quality and effectiveness are uneven across the EU, and no effective mechanisms exist to deal with cross-border situations.

A more integrated supervisory system would continue to build on the work of national supervisors, which could be complemented, coordinated and supervised by an EU-level supervisor. The definition of such integrated system will require addressing issues linked to the scope and powers of such EU-level supervisor, and to the body that should be entrusted with such supervisory powers.

Effective EU level-supervision should include all obliged entities (both financial and non-financial ones), either gradually or from the outset. Other options would rest on the current level of harmonisation and provide for a narrower scope, i.e. oversight of the financial sector or of credit institutions only. These options would however leave weak links in the EU supervisory system.

Linked to the issue of the scope is that of the powers that such EU-level supervisor would have. These may range from direct powers (e.g. inspection of obliged entities) to indirect powers (e.g. review of national supervisors' activities) only, either on all or some entities. Alternatively, the EU-level supervisor could be granted both direct and indirect supervisory powers. The entities to be directly supervised by the EU-level supervisor could be predefined or regularly reviewed, based on risk criteria.

Finally, these supervisory tasks might be exercised by the European Banking Authority or by a new centralised agency. A third option might be to set-up a hybrid structure with decisions taken at the central level and applied by EU inspectors present in the Member States.

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?

at most 1 choice(s)

- ☐ 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

How should the entities subject to direct supervision by the EU supervisor be identified?

- ☐ They should be predetermined
- ☒ They should be identified based on inherent characteristics of their business (e.g. riskiness, cross-border nature)
- ☐ They should be proposed by national supervisors

Which body should exercise these supervisory powers?

at most 1 choice(s)

- ☐ 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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With regard to centralising oversight, it will be important to strike the right balance: a supervisor that is too distant from the market is likely to miss important details, which can derive from the proximity to national law enforcement and market community. A critical success factor will be ensuring that supervisors are well equipped with financial, human and IT resources as well as appropriate powers in terms of access to information. The mandate recently given to the European Banking Authority to lead, coordinate and monitor AFC is a positive step towards regulatory consistency for financial institutions and payment operators. In addition, a new EU-level entity could be tasked with setting standards and monitoring national regulators for non-FS entities.

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to mention that national governments remain the sole legitimate authority to fight crime and enforce the law. A broader set of policies other than regulatory action directed at the financial system, is needed to weaken international organised crime and make communities safe. Action to secure the financial system needs to be accompanied not only by adequate investments into better intelligence and law enforcement, including appropriate checks and balances, but also proportional investments into social policy to improve inclusion in areas suffering situations of economic inequality and large presence of organised crime. Furthermore, support for building governance capabilities in developing countries will reduce possibilities for organised crime to find safe harbors in which to thrive.

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 trends. They receive and analyse suspicious transaction and activities reports submitted by obliged entities, produce analyses and disseminate them to competent authorities.

While financial intelligence units generally function well, recent analyses have shown several weaknesses. Feedback to obliged entities remains limited, particularly in cross-border cases, which leaves the private sector without indications on the quality of their reporting system. The cross-border nature of much money laundering cases also calls for closer information exchanges, joint analyses and for a revamping of the FIU.net – the EU system for information exchange among financial intelligence units. Concerns regarding data protection issues also prevent Europol, under its current mandate, to continue hosting this system.

An FIU coordination and support mechanism at EU level would remedy the above weaknesses. Currently, the only forum available at EU level to coordinate the work of FIUs is an informal Commission expert group, the FIU Platform.

This section aims to obtain stakeholder feedback on a) what activities could be entrusted to such EU coordination and support mechanism and b) which body should be responsible for providing such coordination and support mechanism.

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?

at most 1 choice(s)

- ☐ 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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Providing a platform for coordination and support to national authorities could be the main added value of oversight at EU-level. Ensuring appropriate tools are available to law enforcement is as important as potential supervisory interventions in case of non compliance by national supervisors or obliged entities.

Enforcement of EU criminal law provisions and information exchange

Recent actions have increased the tools available to law enforcement authorities to investigate and prosecute money laundering and terrorist financing. Common definitions and sanctioning of money laundering facilitate judicial and police cooperation, while direct access to central bank account mechanisms and closer cooperation between law enforcement authorities, financial intelligence units and Europol speed up criminal investigations and make fighting cross-border crime more effective. Structures set up within Europol such as the Anti-Money Laundering Operational Network and the upcoming European Financial and Economic Crime Centre are also expected to facilitate operational cooperation and cross-border investigations.

Public-private partnerships are also gaining momentum as a means to make better use of financial intelligence. The current EU framework already requires financial intelligence units to provide feedback on typologies and trends in money laundering and terrorist financing to the private sector. Other forms of partnerships involving the exchange of operational information on intelligence suspects have proven effective but raise concerns as regards the application of EU fundamental rights and data protection rules.

This section aims to gather feedback from stakeholder on what actions are needed to help public-private partnership develop within the boundaries of EU fundamental rights.

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

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently feedback mechanisms between the public and private sector are not functioning in an effective way. Recognising that feedback can be given only to the extent that it does not hamper authorities' investigations, a solution should however be explored to provide feedback on SARs in a safe way so that obliged entities can improve reporting mechanisms, as well as internal controls.

Public private partnerships can be useful in building trust and ensuring effective cooperation. However, attention should be paid so that they do not become a mere forum for exchanging ideas, but rather including governance mechanisms that ensure useful communication channels.

Strengthening the EU's global role

Money laundering and terrorism financing are global threats. The Commission and EU Member States actively contribute to the development of international standards to prevent these crimes through the Financial Action Task Force (FATF), an international cooperation mechanism that aims to fight money laundering and terrorism financing. To strengthen the EU's role globally, and given the fact that the EU generally translates FATF standards into binding provisions, it is necessary that the Commission and Member States speak with one voice and that the supranational nature of the EU is adequately taken into account when Member States undergo assessment of their national frameworks.

While FATF remains the international reference as regards the identification of high-risk jurisdictions, the Union also needs to strengthen its autonomous policy towards third countries that might pose a specific threat to the EU financial system. This policy involves early dialogue with these countries, close cooperation with Member States throughout the process and the identification of remedial actions to be implemented. Technical assistance might be provided to help these countries overcome their weaknesses and contribute to raising global standards.

This section seeks stakeholder views on what actions are needed to secure a stronger role for the EU globally.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Push for FATF standards to align to EU ones whenever the EU is more advanced (e.g. information on beneficial ownership)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The European Commission as a member of FATF, already represents the interests of the EU in the FATF. This should not replace the Member States being directly represented. We concur that the EU should promote consistent international standards, as well as ensuring that the EU supervisory framework has effective communication mechanisms in place with third-country authorities.

Additional information

Should you wish to provide additional information (for example a position paper) or raise specific points not covered by the questionnaire, you can upload your additional document here.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

The maximum file size is 1 MB.
You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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**/PwC_response_to_EC_consultation_on_action_plan_on_preventing_moneylaundering_and_terrorist_fin.
pdf**

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-anti-money-laundering-action-plan_en)

Consultation document (https://ec.europa.eu/info/files/2020-anti-money-laundering-action-plan-consultation-document_en)

Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

More on anti-money-laundering (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en)

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

Contact

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