Contribution ID: 3f3acc7e-d507-4024-baec-8fc1511f7612
Date: 25/08/2020 20:34:58

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.

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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
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* 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

Laure

* Surname

BRILLAUD

* Email (this won't be published)

lbrillaud@transparency.org

* Organisation name

255 character(s) maximum

Transparency International
& co-signing TI national chapters:
TI Belgium
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* Organisation size

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

Transparency register number

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

501222919-71

* Country of origin

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

- Afghanistan
- Åland Islands
- Albania
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- American Samoa
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- Anguilla
- Antarctica
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- Bosnia and Herzegovina
- Botswana
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- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
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- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Mayotte
- Mexico
- Micronesia
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- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
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- Nigeria
- Niue
- Norfolk Island
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau

- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
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- Hungary
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- North Korea
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- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
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- Wallis and Futuna
- Western Sahara
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- ( ) Saint Helena Ascension and Tristan da Cunha
- ( ) Saint Kitts and Nevis
- ( ) Saint Lucia
- ( ) Zambia
- ( ) Zimbabwe

* 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
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s):

Anti-corruption non-governmental organization

* 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.

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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	○	○	○	◉	○	○
Country-specific recommendations in the context of the European Semester	○	○	○	○	◉	○
Action following complaint by the public	○	○	○	○	◉	○
Breach of Union law investigations by the European Banking Authority	○	○	○	○	◉	○
New powers granted to the European Banking Authority	○	○	○	◉	○	○

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	○	◉	○	○	○	○
At national level with financial support and guidance from the European Union	○	◉	○	○	○	○
At the level of the European Union (oversight and coordination of national action)	◉	○	○	○	○	○
At international level	○	◉	○	○	○	○
No additional action at any level	○	○	○	○	◉	○

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.

Country-specific AML recommendations in the context of the EU semester have proven highly ineffective. They tend to be diluted and overshadowed by broader economic considerations. In compliance with UNCAC obligations, Transparency International has long been calling for the Commission to resurrect the anti-corruption report which should include AML considerations and recommendations.

Breach of Union law investigations should be conducted by an independent EU body. If the European Banking Authority is to continue playing this role, its governance should be overhauled to guarantee independence, transparency and accountability.

Moreover, civil society organisations specialised in anti-corruption and anti-money laundering should be included among those who can request the EBA - or any responsible body - to begin a Breach of Union Law investigation. Currently, the EBA can investigate upon a request from one or more member states, the European Parliament, the Council, the European Commission, or the Banking Stakeholder Group. In the specific case of the Luanda leaks, we call on the EBA to conduct an inquiry into the recent revelations, to assess the actions taken by national supervisors, identify possible breaches in EU law, issue appropriate recommendations for reform and sanction any identified failing or breach in EU law.

Civil society organisations specialised in anti-corruption and anti-money laundering should also be given the right to request the Commission to undertake infringement procedures against Member States for failure to implement EU AML rules. Such mechanism would contribute to significantly increase Member States' accountability towards their citizens when failing to implement EU rules.

Additional comments

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Despite the recent scandals and repeated warnings from the Commission that there should be no further delays in transposing new anti-money laundering rules (both 4th and 5th AML Directives), only 11 Member States have formally completed full transposition of the 5th Directive (see https://ec.europa.eu/info /publications/anti-money-laundering-directive-5-transposition-status_en). As shown by the recent Luanda leaks scandal, some important aspects of EU legislation are not yet effectively implemented such as the obligation to carry out enhanced due diligence on Politically Exposed Persons.

With the COVID crisis expected to hardly hit the European economy in the long term, the risk is high that national regulators, supervisors and obliged entities relax their AML prevention efforts in an attempt to remove any potential barrier to recovery. With regard to provisions on beneficial ownership transparency, the result is even more alarming, only 5 countries have implemented fully accessible public registers (see https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners /5amld-patchy-progress/). It is essential that the Commission exerts pressure to speed up the process of transposition, and intensifies efforts to ensure proper and harmonised implementation and respect of EU law both in letter and spirit. Indeed, a number of Member States have introduced limitations when implementing their beneficial ownership registers such as tipping off provisions requiring to inform beneficial owners if someone is doing a search on them, paywalls or limitations and constraints in search functions.

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	◉	○	○
Structure and tasks of supervision	◉	○	○
Tasks of financial intelligence units	◉	○	○
Customer due diligence	◉	○	○
Electronic identification and verification	◉	○	○
Record keeping	◉	○	○
Internal controls	◉	○	○
Reporting obligations	◉	○	○
Beneficial ownership registers	◉	○	○
Central bank account registers	◉	○	○
Ceiling for large cash payments	◉	○	○
Freezing powers for financial intelligence units	◉	○	○
Sanctions	◉	○	○

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 the process of harmonising implementation through a Regulation, the Commission must guarantee that the level of requirements will be maintained and standards already agreed in the Directive will not be watered down during the negotiation process.

The regulatory and supervisory framework of designated non-financial business and professions should also be harmonised through a Regulation. At the moment, Member States assign different bodies or even professional associations with the task of regulating and enforcing anti-money laundering rules related to non-financial businesses and professions. There is a risk of conflict of interest, particularly if such tasks are conducted solely by professional body associations. Supervision of a specific sector might also be inefficient if the responsibility is split across different bodies. For example, in some member states, professionals operating in the real estate sector and undertaking anti-money laundering checks (real estate agents, lawyers, corporate service providers) are regulated and supervised by different bodies. This has an impact not only on the consistent application of rules, but also on ensuring a broad understanding of the AML risks in that given sector.

With regard to beneficial ownership transparency (BO), a EU regulation should aim to harmonise the following issues:

• Improved definitions, including lowering the threshold that defines ownership and control, particularly in cases where the risks are considered higher and where the usual 25% threshold is not helpful to understand the ownership and control of a legal entity as in the case of alternative investment funds for example where the 25% threshold does not allow for reporting any beneficial owner. It is also important to adopt a unified and harmonised definition of beneficial ownership across all policy areas, i.e. not only anti-money laundering but also tax, public procurement, etc. Beneficial ownership should be defined in EU company law and

applies across EU legislations and policies.

• Access to data : better define and specify the entities and individuals that can have access to the register and how access should take place. Competent authorities (Anti-corruption bodies, tax agencies, law enforcement, judicial authorities, financial intelligence unit, and AML supervisory authorities) should have direct access to the register. Free access to data shall be guaranteed for obliged entities which are expected to consult the registers for their due diligence and report any discrepancy in the data provided in the registers and the results of their own due diligence activities. Public access to minimum information on beneficial information should be guaranteed for free.
Registers should be available in open data format and standardised to ensure their interoperability and interconnectedness. The registers should include historical data and a search function that allows searches using the name of the beneficial owner, director or legal entity or arrangement.

• Trust registers: public access to minimum information on BO should be extended to all trusts and not just trusts owning foreign companies as foreseen by current provisions.

• Exceptions: public access to beneficial ownership information (or parts of it) should be done with due respect to privacy and safety concerns and therefore can be limited in exceptional cases. The law should determine under which circumstances this can be requested by interest parties (e.g. security risks) and a process to assess the request and make a decision. This exception, however, should not apply to the information available to obliged entities and competent authorities.

• Quality of data: BO data should be accurate and reliable. The government needs to resource and empower the registry authorities (or another body) to verify the data in the registry and invest in technological solutions to do so. The data should be, at least, cross-checked against other government databases

• Penalties for failing to submit or update information, including dissolution of the company. There should also be dissuasive sanctions for submitting false information.

• Monitoring & evaluation: Member States should be required to publish an annual report on the use of BO registers. It would be interesting to collect annual statistics on the number of users, the number of anomalies detected, the number of inconsistencies reported by obliged entities to understand if the new architecture in place is fit for purpose.
With regards to improving domestic and international cooperation, the following should be harmonised:
[the answer continues in the following box]

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.

[Bellow you can find the second part of the answer to the question "What other provisions should be harmonised through a Regulation?]

• There should be clear rules about what type of information can be shared among different domestic competent authorities, including in relation to information protected by secrecy rules.To allow the effective use of bank data, intelligence reports, and other data collected as part of supervisory efforts, authorities should be able to share this information easily, without a court authorisation. To avoid abuses, the law should include strict rules on confidentiality and handling of this information and sanctions for non-compliance. Automated mechanisms for sharing relevant information should be put in place. Supervisory

authorities in the financial sector should cooperate to make use of prudential data for anti-money laundering purposes.
• The directive includes provisions to facilitate the exchange of information across member states as well as European authorities (e.g. ECB, EBA and other relevant bodies). There should be clear provisions of which data can be shared, under which circumstances and how. Within the EU, it would be important that intelligence data and supervisory findings are shared regularly with relevant foreign counterparts, particularly when cross-border elements are identified. Domestic competent authorities should have the power and resources to conduct diligence on behalf of foreign counterparts (within and outside the EU), including to request additional information from obliged entities.

Finally, the EU should facilitate access to harmonised data on politically exposed persons in order to facilitate the work of competent authorities and obliged entities in charge of the identification and verification of their customers and beneficial owners.

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.

Crowdfunding platforms and providers exchanging virtual currencies (i.e. virtual to another virtual currency; and not only fiat to virtual currencies) should be added to the list of obliged entities.

In addition, service providers to applicants of so-called golden visas or passports (also known as residence- and citizenship-by-investment schemes) shall be added to the list of obliged entities. The second edition of the Supranational Risk Assessment acknowledged the risks related to this sector. Risks of abuse have significantly heightened during and in the aftermath of the COVID-19 crisis where we have seen an increase in the number of applications concomitant with the obligation for the authorities in charge of reviewing the applications to operate under unusual and restrictive conditions (e.g. working from home, etc.). For example, in May 2020 Portugal raised 192.4 million euros through Golden Visas - its highest amount since March 2017 (see https://transparencia.pt/vistos-gold-um-sprint-pela-calada/). This more than quintupled the figure raised in April 2020 (28 million euros), with an increase of 421%, (see https://visao.sapo.pt/atualidade /economia/2020-06-09-vistos-gold-investimento-quase-triplica-em-maio-para-146me/). The Cypriot government has decided to speed up the processing of several ending applications for citizenship-by-investment amid the COVID-19 pandemic (see https://www.schengenvisainfo.com/news/cyprus-expedites-examination-of-pending-citizenship-by-investment-applications/).

This industry currently operates unregulated. European rules should be amended to include all agents providing advisory services, material aid and assistance for the submission and renewal of golden visas as well as the public or private entities in charge of carrying due diligence checks on golden visa applicants in

the list of obliged entities subject to AML obligations. New rules should also specify the need for a registration and licensing regime of the operators in the sector and a clear supervisory infrastructure. In the event where the profession is self-regulated by a professional body, the latter should be subject to oversight by a public body.

However, it should be highlighted that this would not entirely address the issue as the ultimate responsibility should lie with public authorities and cannot be delegated to the private sector. This is also why we recommend that authorities ultimately responsible for granting golden visas have the possibility to consult and submit requests to the Financial Intelligence Unit on a given applicant to help them make informed decisions.

Finally, Member States should be required to systematically collect and publish disaggregated data on golden visa applicants (number of applications, rejected applications, golden visa granted, nationality of applicants and grantees, etc.). This would contribute to increasing transparency and shall help prevent abuse of the schemes.

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.

FinTech activities do indeed raise AML issues because this is a less mature market and there is a risk that criminals step away from the formal banking system through payment service providers (PSPs) to avoid being spotted.

We see opportunities for abuse and emerging risks posed by the use of new technologies and FinTech for this is a less mature and less regulated market which could offer a gateway for criminals from regulated services, such as traditional banking. FinTech activities also present inherent risks by their very nature. By enabling quick and anonymous transactions usually done through non-face-to-face business relationships, they indeed render more difficult due diligence work and transaction monitoring. It is therefore important that the sector is fully integrated within the EU AML regulatory framework. The risks posed by the sector should also be regularly assessed as part of the biennial EU Supranational Risk Assessment and the national risk assessments carried out by EU Member States.

FinTech companies can present complex structures and it is important that EU and national authorities understand how the market is structured and the specific risks that may derive from it. Finally, the EU should ensure that existing and future EU rules governing the sector such as the Digital Operational Resilience Framework for Financial Services align with EU AML policy framework

The next comment does not relate to FinTech activities but appears to best fit under this section which deals with aspects missing or overlooked in current rules.

The regulation of nomineeship is an essential aspect of ML prevention that has been overlooked in past EU negotiations. However, the Panama Papers and other recent scandals have shown the risk that nominees are misused to disconnect the assets from their owner and disguise the identity of the beneficial owner. The current EU definition of beneficial owners leaves a loophole allowing for nominees acting as company directors to be reported as beneficial owners. The EU must regulate the provision of nominee services, i.e. require nominees to be licensed, to disclose the identity of their nominator to the company and any other

relevant registry and keep records of the person who appointed them. Sanctions should effectively apply whenever a nominee has been wrongly reported as a beneficial owner. This should be made more explicitly in EU rules.

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	◉	○	○
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	◉	○	○
Deposit Guarantee Schemes Directive (Directive 2014/49/EU): customer assessment prior to pay-out	○	○	◉
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	◉	○	○
Categories of payment service providers subject to anti-money laundering rules	◉	○	○
Integration of strict anti-money laundering requirements in fit&proper tests	◉	○	○

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.

The EU policy debate on golden visas has been so far essentially framed as an immigration issue which is considerably limiting the EU scope of action and has raised issues in terms of legal basis. The issue should also be considered from an AML perspective, where the EU would have the mandate to regulate the golden visa industry and ensure minimum AML standards are applied in the application and granting process.

Asset recovery constitutes another policy area that should be better aligned with anti-money laundering rules. Money laundering prevention will not be enough if the EU wants to stop serving as an attractive destination for corrupt individuals and their money. Money laundering prevention is not only about having good compliance systems in place to detect anomalies and suspicious transactions, it is also about deterring criminals from using the EU as a circuit for their illicit activities by making sure the risk of being imposed sanctions and seeing their assets confiscated is too high. Asset recovery makes crime less financially rewarding, saps the power bestowed on criminals by their wealth, deprives them of “seed money” and generates resources to compensate victims.

It is essential that the EU better connects both AML and asset recovery policy areas and further enhances its asset recovery efforts. According to Europol estimates, a small 2.2% of the proceeds of crime are frozen and an even tinier 1.1% is actually confiscated, meaning very little is ever returned to victim populations.

Transnational corruption committed by high level officials takes away huge amounts of money from countries, depriving their population of the most basic services. It is essential that this issue is addressed in a systemic and comprehensive fashion at EU level. Transparency International calls on the EU to reform its asset recovery framework to facilitate confiscation including in situations where securing a prior conviction is not possible and introduce principles for the responsible return of stolen assets to victim populations of third countries.

Effective asset confiscation and return efforts are often impeded by ineffective international co-operation. In particular, the applicability of current international and EU asset recovery mechanisms tends to be overly dependent on the circumstances and situation in the country from which the stolen assets originate. Proceedings could be delayed by a poorly-functioning legal and/or judicial system or the individuals targeted could still be in power and have control over these institutions in the victim country. It is critical that the EU further harmonises and upgrades its asset recovery policy framework to allow for more proactive enforcement at all phases of the asset recovery process including not only the freezing and confiscation phases but also the repatriation phase, an issue currently overlooked in EU legislation. In this last phase, cooperation between Member States is critical. Establishing EU-level mechanisms to organise collectively the repatriation of confiscated assets to the country of origin can prove particularly relevant in cases where multiple EU jurisdictions are involved. Past experiences of collective repatriation have proved the most successful so far.

See next section for more detailed recommendations on how to reform the EU asset recovery policy framework .

Additional comments

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

The EU must urgently take action to revise its Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. In particular, we recommend that the EU:

- Adopt measures for Member States to initiate confiscation proceedings autonomously in accordance with the principles of rule of law as defined by the European Commission (see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0163&from=EN). Asset recovery efforts are undermined by both ineffective international cooperation making holding countries heavily dependent on judicial proceedings taking place in the country where the crime was committed and the assets stolen. Measures such as non-conviction based confiscation tools could help overcome these obstacles and facilitate confiscation by dispensing from requiring prior criminal conviction to confiscate the assets. This should be done in keeping with the above referred principles of the rule of law as defined by the European Commission. Provided that, in accordance with these Principles, sufficient safeguards are in placed including regarding the purpose that these measures do not aim at establishing whether the defendant is guilty or not but rather aim at recovering the assets, these measures can offer a particularly effective way to make crime less financially rewarding.
- Adopt principles for the management, transfer and ultimate use of confiscated assets held in EU Member States in corruption cases involving foreign high level officials. The current EU legislation does not cover the issue of asset return except in domestic cases. As part of the review of the Directive on the freezing and

confiscation of instrumentalities and proceeds of crime in the EU, the EU should consider addressing the return of confiscated assets in cross-border corruption cases and in doing so, introducing principles for the management, transfer and ultimate use of confiscated assets. Asset recovery processes initiated by Member States should at all phases respect principles of transparency, accountability, inclusiveness, efficiency and integrity and ultimately aim at redressing the damage caused by grand corruption in the country of origin of the assets and providing remedy to the population harmed by the corrupt conduct of their rulers.
- Require Member States to systematically collect and publish data on their asset recovery efforts. Those should include information on assets frozen or confiscated, reparations or restitution ordered, and assets returned, as well as indications on the type of predicate offences and whether the decision to confiscate was the result of civil or criminal proceedings. Member States shall make statistics on concluded cases and information on laws and results publicly available and accessible at a central location such as a dedicated website and issue timely press releases on specific cases. Data should be harmonised at EU level to facilitate cross-country comparison and effectiveness evaluation.
- It should be noted that some EU countries have already committed to adopt similar legislations to facilitate the return of stolen assets to victim populations. This is the case of France where a parliamentary report “Investir pour mieux saisir, confisquer pour mieux sanctionner” (Working to better seize, confiscate and sanction), commissioned by the Prime Minister and published on 26th of November 2019, lays the ground for future legislation by highlighting the principles of transparency, accountability, solidarity, integrity and efficiency that should be the basis for any future regulation of the restitution of assets (see https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2019/11/rapport_agrasc.pdf). Transparency International has been supporting these efforts at national level, insisting on the need for a well-governed and inclusive process involving civil society both in the country where the money is held and the country where it is returned to. The French initiative should inspire EU leaders to adopt a similar legislation at EU level.

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 complement, 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
- [x] 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
- [x] 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
- [x] 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
- [x] A new EU centralised agency
- [ ] A body with a hybrid structure (central decision-making and decentralised implementation)
- [ ] Other

Additional comments

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While there seems to be a broad consensus now around the need for increased supervision at EU level, some questions remain as to the form it shall take as well as the scope of the mandate and powers the EU should be given. Currently, no EU body appears appropriate or fit to take on future anti-money laundering supervisory responsibilities. Transparency International recommends the creation of a new independent body. The EU AML Action Plan has left open the possibility of granting supervisory powers to the European Banking Authority (EBA). However, its governance structure has proven inadequate to effectively cover EU-level anti-money laundering supervisory needs. The EBA's main decision-making body is its board of supervisors, composed of the banking authorities of the 28 EU Member States. In recent past instances, we have seen the conflict this can create where the EBA board decided to cover up possible breaches of the law by Member States in the Danske Bank case.

Powers & scope: it is vital that the supervisory powers of a new body are not limited to coordination and exchange of information. It should be given direct authority to investigate and sanction individual institutions. The body should also have powers to supervise and sanction Member States for failing to comply with their supervisory duties.

However, it is important to clarify that it should not substitute national authorities but complement Member States' supervisory actions in high-risk cross-border cases and in cases where national authorities are weak. Direct EU supervision should also be considered in cases of low capacity and resources of national authorities as assessed by the EU, MONEYVAL or FATF.

In that regard, Transparency International agrees with the Action Plan that a well-defined scope for supervision is essential, and recommends that it extends to all obliged entities, and does not focus exclusively on large financial institutions, one of the suggested options. Recent cases show that small institutions have played a crucial role in facilitating the flow of dirty money.

Transparency International also recommends starting with the supervision of financial institutions and in the future, the EU should consider expanding the scope to non-financial intermediaries. This would ensure that no grey zone is left for criminals or the corrupt to carry out their dirty business in the EU, without delaying too much the effective EU supervision of the financial sector.

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?

- [x] Developing draft common templates to report suspicious transactions
- [x] Issuing guidance
- [x] Developing manuals
- [x] Assessing trends in money laundering and terrorist financing across the EU and identify common elements
- [x] Facilitating joint analyses of cross-border cases
- [x] Building capacity through new IT tools
- [x] 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
- [x] The future EU AML/CFT supervisor
- [ ] A formal Network of financial intelligence units

Additional comments

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A strong EU anti-money laundering framework will require better integration and analysis of intelligence data collected by Financial Intelligence Units. Considering the cross-border nature of most high-risk financial transactions, having a dedicated body that can access and map intelligence data from different countries would help in the detection of suspicious activities. The EU should consider merging both types of activities (intelligence & supervision) under the same body or alternatively, should build in strong coordination mechanisms to allow for information sharing and cooperation.

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?

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

Additional comments

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Transparency International welcomes the establishment of the Anti-Money Laundering Operational Network and the upcoming European Financial and Economic Crime Centre to improve operational cooperation and cross-border investigations. This shall contribute to improving cooperation in cross-border cases.

Transparency International also welcomes efforts to increase the effectiveness of financial intelligence sharing through public-private partnerships (PPPs). However, these PPPs should be conceived as a way to

complement the suspicious activity reporting systems (SARs), not to substitute them. We would like to highlight the importance of building in governance mechanisms such as parliamentary oversight to ensure that future PPPs operate in a transparent and accountable manner. It is also important that PPPs are governed by clearly defined rules regarding participation and conflict of interest to allow for an inclusive process and avoid risks of abuse. Measures to mitigate risks of tipping off suspected customers should also be put in place.

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 terorrist 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	◉	○	○	○	○	○
Push for FATF standards to align to EU ones whenever the EU is more advanced (e.g. information on beneficial ownership)	◉	○	○	○	○	○

Additional comments

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Stronger international standards on anti-money laundering are crucial to ensure a level playing field. Transparency International's analysis of the implementation of FATF Recommendations related to beneficial ownership transparency show that countries that are attractive corporate formation centres do not have the necessary incentives to improve transparency and accountability in the sector.

The lack of clear international standards requiring countries to collect and maintain beneficial ownership information of companies incorporated in their territory leaves these offshore centres in the comfortable position of continuing to offer offshore services at scale, without necessarily being capable of keeping track of who the real owners of companies are. This means that the corrupt and other criminals will easily find a place where it is much easier to remain anonymous, hampering any attempts by the EU and other foreign authorities to identify, investigate and prosecute corruption and other crimes.

We welcome the European Commission's recognition of the importance of strengthening the global architecture and of its role in pushing for change. In particular, the European Commission should push for a revision of FATF's recommendations and guidance documents to require member countries to establish public beneficial ownership registers, ensuring that register authorities (or other bodies) are mandated and resourced to independently verify the information in the register.

Moreover, reporting entities should be required to report inconsistencies in company data to authorities or to the company register. Finally, the European Commission should push for more concrete measures by FATF in relation to its ongoing support, evaluation, monitoring and sanctioning of countries. (see brief attached)

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.
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Useful links

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

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