

AFME response to the European Commission's Action Plan for a comprehensive Union policy on preventing money laundering and terrorism financing

26 August 2020

The Association for Financial Markets in Europe¹ (AFME) welcomes the opportunity to comment on the European Commission's Action Plan for a comprehensive Union policy on preventing money laundering and terrorism financing.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

We believe that a comprehensive, harmonised and robust AML/CFT regulatory and supervisory framework is indispensable in an effective fight against financial crime in the EU. Please find below our detailed responses to each individual question enclosed in the consultation paper.

We hope that our comments will aid the European Commission's thinking around enhancements of the EU's legal framework and areas of work to strengthen the EU's fight against ML/TF.

Ensuring effective implementation of the existing rules

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

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

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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

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

AFME welcomes the efforts made by the European Commission hereinafter 'Commission' or 'EC' to ensure the effective transposition and implementation of the AML/CFT framework by the Member States (MS).

In our view, the most effective way to ensure continued implementation and compliance with the AML/CFT rules and the regulations prescribed pursuant to legislation is to create private industry bodies in MS that would support financial industry sectors with industry-driven content guidance. In this regard, a useful example is provided by the UK Joint Money Laundering Steering Group (JMLSG), which produces government-approved guidance for the financial industry². In order to ensure the creation, interpretation and application of harmonised rules, it will be necessary that these private industry bodies cooperate internationally.

Furthermore, we would encourage to align the EU AML/CFT rules with the Financial Action Task Force (FATF) recommendations as much as possible. FATF is the global standard setter and alignment between the two regimes would result in a greater level of harmonisation overall.

Additional comments

AFME believes that it is important to distinguish between enforcement of AML rules and financial crime prevention. While enforcement is important and can be improved, the ultimate goal of preventing criminals from using the financial system needs better ways of working across the whole system. Therefore, a greater focus must be placed on increasing coordination, cooperation and information sharing, between financial institutions, supervisory authorities, and law enforcement both within and across MS. Essentially the creation of public-private ecosystem in the EU would facilitate the dialogue, exchange of information and eliminate duplication of efforts between all the relevant actors.

Moreover, harmonisation of cross-border rules and practices encompassing both financial supervisory authorities and financial intelligence units would also be helpful. We will elaborate on this point further in the response.

² JMLSG is a private sector body. AFME is one of a number of trade associations represented on the JMLSG. JMLSG is the principal AML/CFT industry guidance drafting body for financial services in the UK that helps trade member bodies to comply with their obligations in terms of AML/CFT legislation and the regulations prescribed pursuant to legislation. JMLSG's Guidance is recognised by the UK Government and the Financial Conduct Authority (FCA) and is shared as best practice internationally, in terms of its encompassing coverage, risk-based approach and level of granularity. See [here](#) for further information.

Delivering a reinforced rulebook

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

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

What other provisions should be harmonised through a Regulation?

AFME agrees that the minimum harmonisation approach has resulted in a fragmented AML/CFT regulatory landscape. Therefore, we welcome the EC's efforts in moving towards greater harmonisation in this space.

When designing new rules, we encourage the EC to consider some of the existing national differences that can create obstacles for certain MS in transposition of certain AMLD requirements. We will expand this comment in the 'Additional Comments' at the end of this section.

Having said that, a clear, co-ordinated and simplified set of rules that need to be directly transposed into MS laws will help to better tackle financial crime. The following areas could be further harmonised through a regulation:

- **Public-private ecosystem and cross-border information sharing:** Creation of public-private ecosystem in the EU would facilitate the dialogue and exchange of information between all the relevant actors, such as financial institutions, supervisory authorities, and law enforcement.
- **Industry driven content guidance:** We think the EC should support industry-driven content guidance that would be drafted by private industry bodies in MS. The EC is also encouraged to go a step further and consider having JMLSG type of guidance that would be written by the private sector and approved by the EC.
- **Identification of beneficial owners:** We think that identification and verification of beneficial owners should be aligned with FATF recommendations and performed on a risk-based approach.

- **Transactions involving high-risk third countries:** We would welcome more harmonisation in the way business relationships/transactions involving high-risk third countries should trigger the application of Enhanced Customer Due Diligence (EDD) measures. We believe that the EDD measures should be invoked on 'occasional' and risk-based basis (they should only refer to transactions outside of existing business relationships). In order to illustrate divergent approaches in this space, we refer to the EBA's revised guidelines on ML/TF risks³ where it is stated that funds generated in a high-risk third country or received from such a country should trigger an application of EDD. In fact, this view is not shared among all the national regulators. We also believe that it should be clearer what EDD measures should be implemented by obliged entities on business relationships or transactions linked to high risk third countries.
- **Data verification requirements:** We would find it helpful if data verification requirements were standardised, especially when it comes to quality (i.e. we would like to know what type of documents are required, ie, original documents, authorised copies, documents sent by email), quantity and sources of the required documents (i.e. customer and ultimate beneficial owners (UBO) documentation).
- **Digital identity verification (eID):** We would find it helpful if digital identity verification means were recognised as an integral and reliable part of customer due diligence (CDD) processes. We believe that identifying situations where the customer's identity is verified via a video-link or similar technological means should be recognised as face to face relationships or transactions. FATF guidance recognises '*reliable, independent digital ID systems with appropriate risk mitigation measures in place*' as standard or low risk.
- **Expected Due Diligence measures:** Clarification and harmonisation of the expected due diligence measures for special business relationships would be welcome (e.g. Investment Fund Business, Syndicated Finance & Lending, etc.).
- **Uniform definitions of Know Your Customer triggers:** We encourage the EC to consider providing uniform definitions of KYC triggers and specification of cases where no "business relationship" pursuant to ML regulations exists [and, therefore, no obligation to fulfil all due diligence obligations are required for customers (so called Non-Business relationships)], and corresponding provisions on clear and specific due diligence measures which should be taken for these "Non-Customers" on a risk-based approach.
 - Harmonised definition of the term suspicious activity report (SAR) and SAR-Filing-Threshold (in contrast to a mere red flag)
 - Uniform rules on filing STORs and SARs
 - Harmonisation of 'Record Keeping' and 'Record Deletion' requirements
 - A common list of asset freezes that would make the customer screening processes across the EU more effective
 - Uniform requirements for the identification of authorised representatives
 - Harmonisation of what standard due diligence (SDD) entails (e.g. waiving of certain general due diligence measures, adjusting the extent, type and timing of measures applied).
 - Standardised approach to and triggers of the need to identify a customer's sources of wealth (SOW) and sources of funds (SOF) (e.g. for situations warranting the application of EDD due to a heightened AML/CFT risk).

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

AFME believes that the provisions on what constitutes tax evasion, criminal offences and sanctions should remain in the Directive, given that these competences belong to the EU MS. Having said that and to the extent possible, some harmonisation in this space could be considered by the Commission in order to ensure MS cooperation.

³ [Draft Guidelines under Articles 17 and 18\(4\) of Directive \(EU\)](#)

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

We believe that when considering areas that should continue to be regulated at national level, the Commission should keep in mind that there exists a local variety of available AML/CFT setups due to historical infrastructure developments in different MS, for example in relation to electronic identification (eID) and central bank account registers

For instance, some products such as cheques should be regulated at national level and should take local setups into account. Having said that, more harmonisation could be achieved in this space by clarifying the KYC standards at the EU level as noted in our comments in the section on provisions that should be harmonised through a Regulation.

Lastly, given the variety of revenues levels across MS, we believe that the ceiling on cash transactions should be regulated locally. Please also see our more comprehensive comment on ‘ceiling for large cash payments’ under ‘Additional Comments’ in this section. In general, we believe that more consideration should be given to this provision if the Commission decides to harmonise it through a Regulation.

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

In order to ensure consumer protection to effectively mitigate the risk of ML/TF, all the services of new economic operators that can potentially contribute to financial crime should be consistently captured under the same AML/CFT legal framework and be added to the list of obliged entities. Expanding the scope of obliged entities in this space would ensure the necessary level playing field between financial institutions and new economic operators.

On crowdfunding platforms, we agree with the ESMA’s opinion where it is noted that these platforms can carry risks associated with ML. *‘This risk can be mitigated if platforms apply due diligence checks on the project owner (including the project itself) and on investors to identify situations where the risk of terrorist financing is increased.*

⁴ Therefore, we think that the crowdfunding platforms should be added to the list of obliged entities.

We also note that new technologies constantly evolve and the existent AML/CFT requirements may not always keep up with the developments. Therefore, we think that the approach in this space should be principles-based, and all the entities authorised to engage in financial transactions should be covered by AML/CFT rules (unless specifically exempted). Ultimately, this means that the scope of obliged entities that ought to comply with the AML/CFT rules should be technology neutral.

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.

FinTechs operate in a high technology niche that can expose financial institutions and their customers to increased financial crime risks. On a risk based approach, the EU framework should pay attention to activities by individual actors – especially in the field of remittance/transmission of funds – currently allowing for the circumvention of payment transparency principles (in particular the identification of originators, beneficiaries or fund transfers), CDD obligations or continuous monitoring activities with respect to low threshold payments to and from high risk jurisdictions. Harmonisation at the EU level in this space would give firms comfort to service customers throughout the EU.

⁴ [Questions and Answers: Investment-based crowdfunding: money laundering/terrorist financing](#)

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

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

AFME believes that several EU legislative frameworks should be better aligned with AML/CFT rules:

- **GDPR** and AML/CFT rules should be better aligned. This would significantly increase legal certainty for the EU AMLD obliged parties and reduce the risk of liability. For instance, in light of the GDPR it is challenging for obliged entities to fill out informed SARs. The entities are often unable to gather all of the meaningful intelligence information as there is a disconnect between what law enforcement agencies (LEA) can share with them.
 - Data retention/data deletion. For instance, authorities may sometimes ask banks for records of historical AML cases for the benefit of an ongoing investigation and these records may not exist as banks were obliged to delete them.
 - Screening for adverse media. For instance, if an entity is a customer of a bank in more than one country, the bank/branch of country X would not be permitted to disclose adverse media screening information to the bank/branch of country Y, as part of the customer specific risk assessment conducted in bank/branch of country Y. Further, screening for additional sanction lists other than the EU and UN lists is another challenge: e.g. the US obliges banks to screen certain of their OFAC lists but there is little guidance as to what extent such screening would be permitted and relevant. Our recommendation is to add sanction lists screening beyond EU/UN lists to the GDPR/adverse media statements.
- **MiFID II**: Customer information collected under MiFID 2 is useful for customer due diligence. Under AML/CFT EU rules, CDD measures shall include, for instance, conducting ongoing monitoring of the business relationship, including scrutiny of transactions undertaken during that relationship to ensure that the transactions being conducted are consistent with the obliged entity's customer knowledge, as well as the business and risk profile. Therefore, more alignment between AML/CFT and MiFID II in terms of collected information would be welcome.
- **MiFID/CSDR rules**: Central Securities Depositories (CSD) are not subject to the AML/CFT rules which mean that no KYC is done by the CSD nor that ongoing transaction monitoring is conducted as regards their securities accounts. This makes it difficult for their customers (e.g. banks, brokers etc.) to have complete transparency relating to transactions on these securities accounts, ultimately resulting in possible ML/TF risks being identified and mitigated. Further harmonisation and clarification on different securities providers AML/CFT responsibilities would be appreciated. While CSDs are out of scope as regards the AML/CFT rules, we would however recommend that guidance is provided for banks as to their possible AML/CFT responsibilities concerning securities accounts, e.g. transaction monitoring.
- **Market Abuse**: Cooperation between competent authorities (e.g. authorities responsible for regulating financial markets and Financial Intelligence Units (FIUs)) is important to detect market abuse and money laundering/terrorist financing, which are often closely linked.
- **Cross border services**: Currently, member countries have discretion as to whether non-domestic institutions (who operate in a country though a passported license) are subject to local AML rules and reporting requirements or not. Spain is an example of a country who expects local SAR reporting to Spanish authorities and abiding to a local format. This should in our view be taken care of through

reporting infrastructure between EU FIUs, rather than through each individual obliged entity, who should be able to file through its “home” FIU.

- **Crypto-assets:** Rules on crypto-assets should be aligned with AML/CFT rules and all the relevant bodies (such as custodian wallet providers etc.) should be treated as obliged entities under the AML/CFT rules
- **Sustainable Development and Illicit Financial Flows:** The EU context on sustainable development should be aligned with AML/CFT rules. We find that illicit financial flows constitute a major disabler to sustainable development and can have a direct impact on a country’s ability to raise, retain and mobilise its own resources to finance sustainable development.

Additional Comments

1st comment:

* This comment relates to the provision on ‘ceiling for large cash payments’ in the table provided by the Commission at the beginning of the section on ‘Delivering a Reinforced Rulebook’.

We understand that the Commission is considering whether an upper limit or a set of ceilings or other sort of limitations (in respect of certain transactions, or between certain parties) can be lawfully and usefully set at a Union level when payments are made in cash.

We wonder whether this requirement would be considered in terms of an absolute limit or in terms of a threshold triggering certain requirements e.g. CDD. In any event, we think that any requirements of this sort should be relative to the size of the economy and could not be imposed on all Member States in a similar fashion.

Overall, we think that this provision should be considered in more detail by the Commission and we would welcome if we could feed into a potential consultation on this particular point. In our view, a detailed methodology in this regard would be required.

2nd comment:

Expanding on our comment relating to the existent national differences that can create obstacles for certain MS in transposition of certain AMLD requirements that we made above. Some countries have more experience in dealing in certain products/services and client types than others. As an example, we would like to point out that the UK had historically had more experience in dealing with multipartite relationships like Investment Managers and their underlying funds. Our members have noticed that shifting of clients to booking models in continental Europe, as a result of Brexit, has highlighted lack of experience in dealing in these types of products/services in some other MS.

Moreover, we also encourage the Commission to keep in mind that different European jurisdictions have distinct legal frameworks and transposition of AMLD requirements will be different in common law jurisdictions and civil law jurisdictions. Literal transposition from documents written for a civil law environment can have the effect of gold-plating, even if unintended, when used in a common law environment. This will in turn lead to the imposition of unnecessary additional procedures in a field of regulation which, as is generally agreed, is presently overburdened with procedures, an issue which does not assist its effectiveness as a whole.

Lastly, more transparency on effective deadlines for transposition of any future regulations will also be welcome. Very often, regulations get published quite late which does not give businesses enough time to prepare for the incoming changes.

Bringing about EU-level supervision

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

AFME welcomes the steps already taken at EU level to further harmonise the EU AML/CFT supervisory framework and notably the enhanced role conferred on the European Banking Authority (EBA).

Regardless of which entity has the AML/CFT oversight responsibilities in the future, its relationships with national law enforcement authorities, local supervisors and banks should be clearly defined at the outset. AFME believes that efficient coordination of AML/CFT supervisory actions would ensure the promotion and enforcement of fully harmonised standards. It would also allow for sharing of best practices and national experiences.

We would also like to stress the importance of ensuring high quality and consistent risk-based AML/CFT supervision, seamless information exchange and optimal cooperation between all financial supervisory authorities, as highlighted by the Commission in its July 2019 package, backed up with enforcement action as appropriate.

Additional Comments

We note that the current AML/CFT supervisory framework consists of several authorities (e.g., European Banking Authority (EBA), European Central Bank (ECB), National Competent Authority (NCAs)). This fragmentation poses problems with regards to the effectiveness of AML supervision. Therefore, AFME believes that, regardless of which entity is entrusted with AML/CFT supervisory powers, the new authority will need to have very clear powers to oversee and instruct national authorities to carry out different AML/CFT related tasks. Furthermore, the new authority should be equipped with sufficient resources and qualified staff.

Establishing a coordination and support mechanism for financial intelligence units

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

AFME believes that better cooperation and harmonisation between FIUs is necessary to strengthen the fight against financial crime in Europe. Although we are aware that several obstacles make it difficult to establish an EU FIU, we believe that the creation of such an agency, supported by the EU MS, should be the long-term goal.

Enforcement of EU criminal law provisions and information exchange

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

We believe that Public-Private Partnerships (PPPs) are the most effective way to prevent financial crime in Europe, as they allow better cooperation and information sharing between financial institutions, supervisory authorities and law enforcement both within and across MS.

Information sharing is key in a PPP. However, this is not always allowed by current regulations. For example, in the newly started Swedish PPP (SAMLIT) participants can only share generic “trend spotting” information and not data on suspicious cases. It would thus be useful to look at the organisational setup of the UK JMLIT, where certain rules provide a clear legal underpinning of JMLIT’s activities, facilitating the exchange of between the NCA and the financial sector.

Strengthening the EU’s global role

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?

at most 1 answered row(s)

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

Additional comments

Money laundering is a global challenge, hence the EU should work in close coordination with international institutions, notably the FATF, the IMF, the World Bank, as well as IOSCO.

With specific regard to FATF, we believe that the Commission should coordinate the EU position and contribute with its specific know-how to the FATF work. Dialogue would serve as an input to both improve FATF standards and to bring FATF standards into the European framework.

Additional information

We would like to share with the EC our discussion paper on the enhancements of the EU's legal framework to strengthen the fight against money laundering and terrorism financing that was published in May 2020 (available [here](#)). The paper reiterates and strengthens some of the comments made in our current submission.

The four main comments that we make in the paper relate to (1) the importance of public-private partnerships, (2) maximum harmonisation approach, (3) AML/CFT supervision in Europe and (4) coordination mechanisms for Financial Intelligence Units.

Should you wish to discuss with us any of the comments enclosed in our submission or the discussion paper, please do not hesitate to get in touch. We would be delighted to work with you on any future updates to the AML/CFT framework in Europe. You can find our contact details below.

AFME Contacts

Aleksandra (Ola) Wojcik
Aleksandra.Wojcik@afme.eu
+44 (0)20 3828 2734

Richard Middleton
Richard.Middleton@afme.eu
+44 (0)20 3828 2709

Hélène Benoist
Helene.Benoist@afme.eu
+32 (0)2 788 39 76