



**European Commission’s Public Consultation on an Action Plan for a Comprehensive Union Policy on Preventing Money Laundering and Terrorist Financing**

**PART 1: 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				

*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?***

Money laundering and terrorist financing is a global threat that is spurred by inconsistent national standards and the fragmentation of international regulation. BAFT has long called on jurisdictions to align with FATF best practices and G20 recommendations. We support these global efforts to tackle cross-border risks, including national reform programs and public-private partnerships.

As the European Commission looks to enhance its enforcement, BAFT members support the better use of the European Supervisory Authorities' (ESA) powers and an enhanced role for the European Banking Authority (EBA) as a rule setter; and the promotion of EBA's consistent implementation within the EU, through the information collected from national authorities, by issuing technical regulatory standards. In order to ensure transparency of beneficial ownership aimed by AMLD 4 and AMLD 5, a concrete solution for Ultimate Beneficial Ownership (UBO) registers is urgently required in terms of quality, reliability and accessibility of UBO data; and harmonization and interconnectivity of UBO registers.

Overall, the AML Action Plan places little emphasis on new technologies and data science. A more efficient implementation of existing rules would be obtained with enhanced analytics and machine learning tools for KYC purposes, which are respectful of privacy rights.

FATF inspections are the most effective tool today to ensure application and enforcement of AML rules as they have a fact-based and holistic perspective, covering both the legislative and regulatory framework as well as the enforcement through FSAs and FiUs. Furthermore, FATF has a forward-looking approach, looking at the status and what needs to be improved going forward, rather than solely focusing on gaps or wrongdoings in the past. However, FATF is global, not European, and only 20 EU member states are members. Ideally, all states should be members of the FATF and in addition, there could perhaps be inspections and measures at EU-level, similar to the local ones.

### ***Additional comments***

Europe should strive for enhanced use of digital tools and shared utilities for KYC purposes and transaction monitoring (instant payments). The use of digital identification for remote customer identification and verification of customer identity should be facilitated to establish business relationships remotely. The key point is the common recognition of the means of identification according to Regulation (EU) No 910/2014. We also welcome that the FATF guidance clarifies the value of using digital identity systems for CDD and clarifies that non-face-to-face customer-identification that is based on reliable digital ID systems may present a standard or even lower risk.

In UBO registers, the misuse of legal persons is a key enabler of money laundering and wider economic crime. International standards seek to prevent this by prohibiting shell companies and requiring that the competent authorities can access information on both formal legal owners and the ultimate beneficial owners. BAFT supports beneficial ownership transparency as a key step towards enhancing the efficiency and effectiveness of the AML/CFT framework, and welcomes AMLD 5 going beyond current international standards to require the establishment of publicly accessible beneficial ownership registers. However, these registers have not been adequately designed to help reporting entities perform due diligence more consistently, or to allow for global beneficial ownership transparency.

Overall, it is important to distinguish between enforcing the rules and actually preventing financial crime. AML compliance must not turn into a tick-in-the-box exercise. In our opinion, there is more to be done in improving the whole system of financial crime prevention in Europe, by increasing cooperation, information sharing and harmonizing cross-border rules and practices, while ensuring a risk-based approach. A combination of EU- and local measures are necessary. There is certainly a lack in cooperation and measures at EU-level, while there is still room for improvement also at local level, for example by improving cooperation and information sharing and developing PPPs. Most of the rules can be harmonized at EU-level, while some enforcement can be local, taking specifics in the local setup into account, for example concerning what constitutes tax evasion, criminal offences or sanctions. We therefore support local enforcement for local activities and EU enforcement for cross-border and complex activities.

***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
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	X	
Freezing powers for financial intelligence units	X	
Sanctions	X	

***What other provisions should be harmonised through a Regulation?***

In the light of the EC Action Plan, we need a more flexible, principle-based and risk-based approach, together with a modernized KYC policy. The goal should be to clarify and push forward a principle-based/ risk-based approach (RBA). The COVID-19 pandemic may drive de-risking, a phenomenon which to a certain extent pleads for a RBA. BAFT has produced [a Respondent’s Playbook](#) to address the issue of de-risking.

Together with the RBA, we need a modernized KYC policy. Regulation should standardize and modernize further KYC policy. In the context of the COVID-19 pandemic, there is an urgent need to broaden up the conditions of non face-to-face on-boarding. Further work is required on e-ID as an on-boarding procedure. The key point is the common recognition of the means of identification as set out in Regulation (EU) No 910/2014, which is already part of the AMLD 5.

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

Discretionary power for Member States to define instances where national specificities need to be taken into account should be minimized. For Central bank account registers and eID, it is important that any regulation take into account the local variety of setups which exist due to the history of infrastructure developments. While a unified solution would be preferable, we recognize that it is not feasible, but local requirements must be reasonable.

***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?***

On a general level, the EU must have the agility to respond to new threats as they emerge. Agility in supervision is key in order to close potential gaps quickly. While FinTechs are subject to rules and supervision on paper, in practice they get very little supervisory attention, as evident by an increasing number of crypto-asset abuses.

**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?**

Alignment between AML/CFT and due diligence requirements under the OECD's Common Reporting Standard (CRS) and the Directive on Administrative Cooperation (DAC2) particularly in regards beneficial ownership are a priority. The new rules should also seek to identify and address areas where AMLD4 and AMLD5 rules could be better aligned with the GDPR framework.

There are numerous cases where GDPR clashes with effective prevention of financial crime. For example, authorities have asked banks for records of historical AML cases for an ongoing investigation and these have not existed because the bank was obliged to delete those records. Public Private Partnerships could be much more effective if data sharing of individual cases was allowed and not just "trend spotting" information. There are also examples of where data sharing within the different departments of e.g. a tax authority has prevented the effective prevention of tax fraud. We understand and agree that privacy for the individual is important; however, there should be exceptions where this right is somewhat limited in the interest of preventing crime.

### **PART 3 – Bringing about EU-level supervision**

---

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

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

***What powers should the EU supervisor have?***

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

***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?***

- 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 specify)

The organizational setup needs to enable the mandate, covering all of the EU (not just eurozone), all obliged entities (not just banks) and the right governance without being limited in its powers by the entities it supervises. The body should hold the right knowledge and resources for its tasks. That can take the shape of a new EU centralized agency.

#### **PART 4 - Establishing a coordination and support mechanism for financial intelligence units**

---

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

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

***Which body should host this coordination and support mechanism?***

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

#### ***Additional comments***

BAFT supports harmonization, clarification and strengthening of the Financial Intelligence Unit (FIU) functions across the EU/EEA. Crossborder and local perspective need to be taken into account when improving the FIUs' role in order to improve the interconnection of FIUs and to avoid duplication. A European FIU function could incorporate the existing Europol structure of the FIU.net and replace the European Commission's Financial Intelligence Unit platform structure, serving as a central node in the system of existing FIUs.

We understand that regulatory and political obstacles make it difficult to institute an EU FIU in the short-term, but we find that a new dedicated body, supported by the member states, must be the long-term goal. The operational nature of an EU-level FIU coordination/ organisation, being involved in the actual work of preventing financial crime, makes it unsuitable to have it bundled together with a supervisor of the system it is involved in. Hence, it should not be part of the EU AML supervisor. We consider better cooperation and harmonization between FIUs a necessity to improve the defence lines against financial crime in Europe.

***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 certain aspects of the functioning of public-private partnerships
- Issue guidance on the application of rules with respect to public-private partnerships (e.g. antitrust, GDPR)
- Promote sharing of good practices

***Additional comments***

Information sharing is key in a PPP, but this is largely prevented by current regulation. For example, in the newly started Swedish PPP (SEMLIT) participants can only share generic “trend spotting” information and not data on suspicious cases. The Commission should look into success factors in existing PPPs, such as the UK’s JIMLIT, to find success factors and bring these to EU-level. For example, we understand that the UK made some changes to its regulation on data sharing/ privacy to enable JIMLIT. In this context, policymakers can clarify and state that this information sharing is not anti-competitive.

**PART 6 - Strengthening the EU's global role**

---

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

	<b>Very effective</b>	<b>Rather effective</b>	<b>Neutral</b>	<b>Rather ineffective</b>	<b>Not effective at all</b>	<b>Don't know</b>
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***

Enhanced alignment between EU and FATF standards is important. A new dedicated body, supported by the Member States, should be the long-term goal. The EU FIU could be engaged as a powerful European actor in the international context, including supporting the EU Commission vis-à-vis the FATF. However, roles would have to be closely defined to assess how Member State's votes would be considered within FATF. Would the current 20 Member States' votes be reduced to one EU vote or would EU be voting as a proxy for all those EU Member States that are also FATF members? More information and dialogue on the topic is needed to most effectively represent EU Members State's interests.