EBF_041940
25 August 2020

EBF RESPONSE TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON AN ACTION PLAN FOR A COMPREHENSIVE UNION POLICY ON PREVENTING MONEY LAUNDERING AND TERRORIST FINANCING

PREAMBLE

The European Banking Federation (EBF), which is the voice of European banks, welcomes the opportunity to comment on the public consultation on the Commission's Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing (hereinafter "the Action Plan"). The EBF fully supports the Commission's overarching objective of addressing the inefficiencies of the current EU AML/CFT framework. The EBF believes that the Action Plan is going in the right direction and appreciates that it is in many aspects very much in line with the AML Blueprint published in March by the EBF (hereinafter "the Blueprint"). To constructively contribute to this consultation, we have conducted a gap analysis to identify in the light of our Blueprint those topics where the EBF has further input to provide. The EBF's detailed answers to the questions of the consultation paper on the 6-pillar Action Plan are set forth below. We would like to emphasize in this preamble the priority areas where we would recommend the Commission to concentrate its efforts and to adapt its approach as appropriate.

Rulebook

The EBF notes in the Action Plan the Commission's intention to maintain the rule-based approach which governs the current EU AML/CFT legislative and regulatory framework. We believe that the Commission should avoid the introduction of additional compliance requirements since they would be counterproductive and would worsen up the "tick-the-box" culture which has prevailed until now and has proven to be inefficient. The EU AML/CFT Rulebook should rather push forward a flexible, principle-based approach, clarifying the risk-based approach (RBA) in line with FATF guidelines. In this field, we expect the Regulation to be supplemented with the adoption of updated guidelines by the European Banking Authority (EBA), hence delivering fully harmonised and modernised standards aimed at mitigating risks and at preventing derisking. The latter is a phenomenon which has been exacerbated by the COVID-19 crisis and urgently needs to be addressed. It is also necessary to modernise and standardise the KYC policy. This should include a relaxation of the conditions for e-identification since the increase of non face-to-face onboarding has been accelerated by the COVID-19 crisis. Given the proliferation of FinTechs and Virtual Asset Service Providers, the AML Regulation should also provide for technological neutrality of the scope of application of AML/CFT requirements, ensuring that the same regulatory and supervisory conditions apply to all economic actors who provide the same financial services.

Effective implementation of the framework / Information sharing

The only way forward to efficiently combat financial crime is through the development of an intelligence-led approach.

This requires the Commission to develop useable tools to ensure transparency of ultimate beneficial owners (UBO) and to adopt a coherent approach for information sharing.

Concrete solutions should be provided for UBO registers to ensure the reliability and quality of UBO data, to relieve Financial Institutions from discrepancies reporting requirements and to harmonise national registers' features in order to facilitate their interconnectivity.

In terms of tools to ensure effective implementation of the framework through information sharing, the Commission should primarily promote public private partnerships (PPPs) and the use of new technologies such as machine learning tools and shared utilities for KYC and transaction monitoring. In order to ensure their efficiency at national level and at EU level (through the Europol's Financial Intelligence Public Private Partnership – EFIPPP), PPPs should be developed in line with concerted best practices and international standards (FATF/Wolfsberg Group) and should be equipped with direct mechanisms of sharing information operationally. Overall, the Action Plan is almost silent on the use of new technologies, including remote identification methods and data science.

For both the operational exchange of data within PPPs and the collection/processing of data via shared utilities, further guidance is required to balance AML/CFT and GDPR requirements and ensure data minimisation. The Commission should adopt a much stronger position in this field.

Supervision

The EBF supports the idea of ensuring high quality and consistent risk-based AML/CFT supervision, seamless information exchange and optimal cooperation between all financial supervisory authorities. A better integration of AML/CFT considerations into prudential supervision, a reinforcement of the AML/CFT role of supervisors and supervisory convergence are required. In this context, a flexible approach for supervision is necessary which notably means that it should focus on managing the AML/CFT risks rather than on inflexible rules-based compliance.

PART 1 – Ensuring effective implementation of the existing rules

Question 1: How effective are the following existing EU tools to ensure application and enforcement of anti-money laundering / countering the financing of terrorism rules? (Please rate each blank proposal and comment if you do not agree with proposed solution)

Please note that the effectiveness of different tools will vary by the type of issue – e.g. EU-level action is likely to be more effective for consistency of definitions, national level action is likely to be more effective for routine supervision.

	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**				

Question 2: How effective would more action at each of the following levels be to fight money laundering and terrorist financing? (Please comment if you do not agree with proposed solution)

Please note that the effectiveness of different tools will vary by the type of issue – e.g. EU-level action is likely to be more effective for consistency of definitions, national level action is likely to be more effective for routine supervision.

	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**	

Question 3: Should other tools be used by the EU to ensure effective implementation of the rules? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

- Money laundering and terrorist financing is a global threat and is only strengthened by inconsistent national standards and the fragmentation of international regulation. EU reform should align with FATF best practices and G20 recommendations, and should aim to support global efforts to tackle these cross-border risks, including national reform programmes and public-private partnerships.

- In addition to EU oversight and coordination and to a better alignment on international standards, an effective implementation of the EU AML framework would be helped by:
  - a better use of the ESAs' powers and enhanced role for the EBA as a rule setter;
  - interpretations by EBA to clarify the regulatory requirements and to ensure coherent application of their guidelines;
  - the promotion of consistent implementation within the EU of EBA guidelines, through the information collected from national authorities and via public-private partnership, by issuing technical regulatory standards; and
  - support for better targeted interventions and a more effective risk-based approach, through EU-level guidance in support of financial crime information sharing (see below our additional comments).

- In order to ensure coherent implementation, it would be also important to ensure that all relevant definitions are the same in all Member States (e.g. PEP, UBO).

- In order to ensure transparency of beneficial ownership aimed by AMLD 4 and AMLD 5, a concrete solution for UBO registers is urgently required in terms of:
  - quality, reliability and accessibility of UBO data; and
  - harmonisation and interconnectivity of UBO registers (see below our additional comments)

- The only way forward to efficiently combat financial crime is through the development of an intelligence-led approach. This requires the Commission to adopt a coherent approach for information sharing. In terms of AML/CFT tools, the Commission should primarily promote public private partnerships (PPPs) and the use of new technologies such as machine learning tools and shared utilities for KYC and transaction monitoring.
  - In order to ensure their efficiency at national level and at EU level (through the Europol's European Financial Intelligence Public Private Partnership – EFIPPP), PPPs should be developed in line with concerted best practices and international standards (FATF/Wolfsberg Group) and should be equipped with direct mechanisms of sharing information operationally (see below our additional comments on PPPs).

- Overall, the Action Plan is almost silent on the use of new technologies, including remote identification methods, and data science. A more efficient implementation of existing rules would be obtained through the use of enhanced analytics and machine learning tools for KYC purposes which are respectful of privacy rights. Allowing further digital tools and shared utilities for KYC purposes and transaction monitoring (instant payments) is a must.

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

Public Private Partnerships (PPPs)

- **Stimulate public-private information sharing and broaden the conditions under which operational data could be shared**

  While there are some positive examples of formal public/private cooperation in the field of counterterrorism and cybersecurity, the AML/CFT framework has so far focused narrowly on the administrative requirements imposed on banks and other regulated entities. The outcome of this rule-based approach is a massive flow of information to the competent authorities, which is typically unguided by feedback and limited by individual banks' limited intelligence picture. In addition, such a concept seems to contradict, essentially, the very basic privacy principles of proportionality and subsidiarity.

  When filing a SAR / STR to their national FIUs, it is vital for banks to receive feedback on their reporting. Such two-fold information streams would facilitate the efforts of banks to identify more clearly, prevent and mitigate the risks of ML/TF, while also decreasing the need for further data processing of those who are not involved in such criminal activities. Nevertheless, as also stated in the European Commission's AML/CFT Package, FIUs, often understaffed, find it difficult to select the data, with an added value, out of all the volume of the data they receive. This rule-based approach results in inefficiency and, ultimately, deviation from the overall objective of detecting suspicious criminal activity. An agreement on typologies and the information that is necessary to be shared between the private and the public sector for the identification unusual/suspicious activities would improve the quality of the reporting and contribute to the efficiency of the process.

  Another issue that banks and other obliged entities face, with regard to reporting, relates to the competences within jurisdictions. Currently, exchange of information from banks to national competent authorities is possible within the home country jurisdiction. However, banks find it extremely difficult to communicate information to public authorities located outside the home jurisdiction. Lack of adequate information and intelligence sharing with all relevant bodies impedes the speed with which organised crime should be addressed. Enabling banks to share information with other authorities could radically enhance the response to cross-border organised crime.

The EBF believes that public-private partnerships (PPP), where law enforcement information can be shared with obliged entities, should be strongly encouraged and embraced first and foremost by public authorities. Sharing of aggregated data, with the objective of fighting against criminals should already be possible under the existing legal framework, including GDPR. Exchange of operational data, however, is, at this stage only possible in counter-terrorism financing or where national PPPs have supplemented the EU regime with local legal gateways. The EBF would welcome an EU AML/CFT framework that broadens the conditions under which operational data could be shared, including on a cross-border basis. Examples of national PPPs in jurisdictions inside and outside the EU could be used as best practices to develop a European model. This would imply the necessary removal of legal obstacles that may impede data sharing. A solid legal framework endorsed by, among others, data protection authorities, authorising under specific conditions such data sharing (including personal data) should be put in place.

Although challenging, it is also crucial that PPPs are supported at EU level to tackle cross-border threats. Given the limited competence the EU has in the area of law enforcement, the EBF would suggest that the mandate of Europol should be reviewed in such way that Europol would be entrusted with the competent EU law enforcement agency.

- **Europol Financial Intelligence Public Private Partnership (EFIPPP)**

  The Europol Financial Intelligence Public Private Partnership (EFIPPP) was created in December 2017. Participants and observers are large financial institutions, Financial Intelligence Units and Law Enforcement agencies from an increasing number of jurisdictions, mainly European countries. EFIPPP has the active support of the EBF and the International Institute of Finance (IIF) and is also supported by the Commission (DG Home, DG Just), the Council of the EU, the European Data Protection Supervisor (EDPS), the European Banking Authority (EBA), the European Central Bank (ECB), Interpol, FATF and National Supervisory Authorities. The EFIPPP objectives are:

  - To provide an environment for cooperation and information exchange;
  - To build a common intelligence picture and understanding of the threats and risks, through the definition of risk indicators;
  - To facilitate the exchange of operational or tactical intelligence associated with on-going investigations;
  - To identify gateways for information sharing in accordance with domestic and EU legal frameworks, and clarify regulatory expectations on information sharing gateways for such exchange.

Shared utilities

- **Shared KYC check capabilities (KYC utility)**

  The EU framework should explicitly allow obliged entities to create joint KYC capacities under certain conditions, provided data protection and privacy rules are respected. These KYC utilities should be:

- based on clients' consent;
- in line with competition law rules (notably, the utility should not exclude new members from joining on a reasonable basis).

KYC utilities are not only useful tools for banks, but they also have the potential to bring about significant efficiency gains for customers, as they would spend less time responding to KYC requests. In turn, this would allow banks to re-orientate staff to areas where they can contribute more significantly to the fight against financial crime.

A good example for such an initiative is the new KYC shared utility within the beneficial owner register of Austria, which provides legal entities the capability to upload the documents for the identification and verification of the beneficial owners via qualified parties (e.g. lawyers or tax advisers) ("Compliance Package"). Banks are then able, generally, to rely on these documents, which need to be updated or confirmed by the qualified party on an annual basis.

Similar on-going initiatives are currently taking place in Nordic-Baltic countries with the full support from public stakeholders.

- **Transaction Monitoring Netherlands (TMNL):**

TMNL is a unique step in the fight against money laundering and the financing of terrorism. Five Dutch banks (ABN AMRO, ING, Rabobank, Triodos Bank and de Volksbank) have decided to establish TMNL in the collective fight against money laundering and the financing of terrorism. The TMNL initiative will be an addition to the banks' individual transaction monitoring activities. TMNL will focus on identifying unusual patterns in payments traffic that individual banks cannot identify. The shareholder agreement was signed in July.

Following an announcement in September 2019, the five banks have studied whether collective transaction monitoring is technically and legally feasible under the aegis of the Dutch Banking Association, as well as the question of whether TMNL can add material value in the fight against money laundering.

The research showed that collective transaction will allow for better and more effective detection of criminal money flows and networks in addition to what banks can achieve individually with their own transaction data. It also showed that combining transaction data will provide new (inter-bank) information that will be useful in the fight against financial criminality. The study findings have recently been discussed with some of the public parties involved.

In addition to the banks fulfilling their own responsibility as gatekeepers, effectively dealing with money laundering and the financing of terrorism requires a national (chain) approach. The banks are therefore working closely with government partners such as the Ministries of Finance and Justice and Security, the FIOD and the Financial Intelligence Unit (FIU). The aim is to collectively significantly increase the return from the chain from identification to detection, prosecution and conviction of criminality. The formation of TMNL ties in with the Money Laundering Action Plan announced by the government in mid-2019. As part of this plan an amendment of the Anti-Money Laundering and Anti-Terrorist Financing Act (Wet tegen witwassen en terrorismefinanciering, or 'Wwft') is foreseen to enable full-scale collective transaction monitoring.

The construction and development of TMNL will be done in phases. The banks have decided to start with this initiative now in anticipation of the proposed amendment to the legislation, due to the urgency of the fight against money laundering and the financing of terrorism and the support from government bodies. Basic assumption is that other banks will also be able to make use of TMNL in due course.

UBO registers

Misuse of legal persons is a key enabler of money laundering and wider economic crime, and 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.

The European banking industry support beneficial ownership transparency as a key step towards enhancing the efficiency and effectiveness of the AML/CFT framework, and welcome 5MLD 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.

The EBF therefore recommends that EU AML reform includes redesign of the approach to beneficial ownership transparency, including maximum harmonisation of definitions and a more efficient and effective allocation of roles across competent authorities, obliged entities and legal persons themselves.

The key aspects for an improvement of UBO registers are:

- Transparency is necessary but not sufficient.
- Beneficial ownership transparency is a tool to prevent and identify misuse of legal persons. It is important that registers of beneficial ownership are designed and implemented to support this fundamental goal, by addressing the FATF Recommendation 24 criteria of adequacy, accuracy and timeliness.
- More measures are required from competent authorities and registrars to ensure that register information is accurate and supports efficiencies across the regulated sector. For example, the UK MER shows that publicity does not guarantee accuracy, echoing the recommendations of repeated FATF horizontal studies, best practices and guidance papers.
- EU leadership on beneficial ownership reform could support efforts to update the FATF standard, including as part of the ongoing FATF strategic review. FATF evaluations of Recommendation 24 shows typically lower assessments of effectiveness than technical compliance, indicating that the current standard is not sufficient to prevent the misuse of legal persons.

PART 2 – Delivering a reinforced rulebook

Question 1: The Commission has identified a number of provisions that could be further harmonised through a future Regulation. Do you agree with the selection? (Please comment if you do not agree with proposed solution)

	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**	

Question 2: What other provisions should be harmonised through a Regulation? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

The EBF notes in the Action Plan the Commission's intention to maintain the rule-based approach which governs the current EU AML/CFT legislative and regulatory framework. We believe that the Commission should avoid the introduction of additional compliance requirements which would be counterproductive and would worsen up the "tick-the-box" culture which prevails today and has proven to be inefficient.

- The Regulation should align to FATF standards and best practice in allowing obliged entities appropriate flexibility to apply proportionate and risk-sensitive measures. Harmonisation could support consistent implementation of these risk-sensitive measures by harmonising the criteria for triggering key AML/CFT procedures, such as simplified due diligence, enhanced due diligence and review of customer information.
- Rules-based requirements should be minimised to a limited group of higher risk situations and should be targeted to mitigate the specific risks of these situations, such source of wealth checks for PEPs, their close family and known associates. Rules-based requirements can add disproportionate cost to legitimate financial flows, deter innovation and damage financial inclusion. This includes where obliged entities are prevented from applying simplified due diligence to low-risk customers or are even required to apply enhanced due diligence to low-risk customers.

Together with the RBA, we need a standardised and modernised KYC policy. In the context of the COVID-19 pandemic, there is in particular 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 AML Regulation should also provide for technological neutrality of the scope of application of AML/CFT requirements, ensuring that the same regulatory and supervisory conditions apply to all actors of the sector who provide the same financial services (see also questions 5 and 6).

In order to support consistency and simplification of cross-border policies and supervision, harmonisation in the definition of key AML/CFT terms and requirements should include:

- Harmonisation of terms and requirements regarding PEPs:
  - The definition of family members of PEPs is fragmented and should be harmonised
  - The responsibility for identifying PEPs and their family members should be recalibrated to ensure that the primary responsibility lies with the relevant public sector bodies, which have easier access to such information

- The definition of State-Owned-Enterprises should be harmonised. EU guidelines on the assessment of customer's political exposure should be provided

- Ensuring that the responsibility for approval of AML/CTF policies, controls and procedures as well as approval of correspondent relationships and business with politically exposed persons can be delegated, when a financial institution operates in different Member States
- Harmonisation of terms and requirements regarding beneficial owners (see our detailed / additional comments under Part 1, question 3)
- Harmonisation of the function of national Financial Intelligence Units (FIU) across the EU/EEA
- Harmonisation of the framework for sharing information of the conditions under which criminal offence data may be processed or shared in the GDPR (see our detailed comments under question 8)
- Harmonisation of adverse media screening which is a key tool to identify risks and should be considered as part of CDD activities where EU guidance would be welcomed
- Generally, regulatory areas where AML legislation has frequent touch points towards other legislation regulated through EU directives (such as GDRP or PSD2) would require further harmonisation

Question 3: What provisions should remain in the Directive due to EU Treaty provisions? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

All material obligations under the Directive should be included in the Regulation. This is essential not only for the creation of a uniform EU AML Regime in the eyes of FATF but also in reducing the administrative burden of the obliged entities operating or transacting business on a cross-border basis. It would also reduce the prospects for regulatory shopping in the EU and the gold-plating of national AML requirements which currently is a major contributing factor behind the incoherence of the AML requirements in the EU.

Question 4: What areas where Member States have adopted additional rules should continue to be regulated at national level? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

Discretionary power for Member States to defined instances where national specificities need to be taken into account should be minimised and be specifically documented. For example, harmonisation of KYC should reflect varying approaches to national identity cards across the EEA.

The Commission should strive for support maximum harmonisation eliminating the need for additional national level legislation. A Regulation would also reduce differing interpretations and incentives for regulatory shopping.

In regard to eID and similar mechanisms, it is important that any regulation take into account the local variety of available setups which exist due to the history of infrastructure developments. Hence technical aspects of eID should be regulated locally or take local setups into account. However, the suitability of these measures for e.g. KYC purposes should be defined and clarified on EU level.

Question 5: Should new economic operators (e.g. crowdfunding platforms) be added to the list of obliged entities? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

Yes, all operators mentioned in ALMD5 and all other operators whose activities involve financial crime risk should be an obliged entity. Local supervisors also should have adequate knowledge and resources to take on their responsibilities also with regard to entities other than credit institutions.

Yes, where economic activity introduces risk into the system then these economic operators should be required to play their part in managing these risks. The EBF advocates for: "The same services, the same risks, the same rules and the same supervision" – see further discussion below.

Yes, aligned with AMLD5. For instance, with regard to the crowdfunding platforms, investment-based crowdfunding carries a risk of misuse for terrorist financing/money laundering (as specified, in particular, in the "Questions and Answers - Investment-based crowdfunding: money laundering/terrorist financing" published by ESMA on 1 July 2015). 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/money laundering is increased.

Question 6: 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 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method) (please provide examples of activities)*

The EBF advocates for: "The same services, the same risks, the same rules and the same supervision" i.e. the same regulatory conditions and supervision should apply to all actors (large digital players, financial institutions and start-ups) who seek to innovate and compete in the FinTech system. Any regulatory framework must keep barriers to entry to a minimum, and should also not hinder incumbents' ability to innovate and develop.

On a general level, the EU should have the ability to respond to new threats as they emerge. Agility in supervision is the key to close potential gaps quickly. Today we see that although rules and supervision are in place on paper for some categories of non-banks and new market participants, they do in some cases get very little attention from the supervisors.

This is particularly important where new economic reduces transparency or increases cross-border risks. However, this may require some adaptation of existing regulation to reflect new technologies and customer journeys.

To help ensure the right balance, we would encourage the Commission to supplement their technical assessment with some key principles:

- New and complex risks are quickly understood and brought within the regulated perimeter as they develop, where appropriate
- Activities by different players along the same value chain stay within the same regulated perimeter, where appropriate
- Activities are subject to a regulatory and supervisory framework commensurate with their risks
- There is a level playing field for all market participants, in line with countries' policy objectives – acknowledging this requires some adaptations, rather than a "blanket application" of all regulatory requirements across all entities and activities

Question 7: 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? (Please rate each blank proposal and comment if you do not agree with proposed solution)

	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**		

Question 8: Are there other EU rules that should be aligned with anti-money laundering / countering the financing of terrorism rules? *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

- **GDPR:** Data protection and anti-money laundering share, each in its own way, the objective of protecting European citizens. However, there can be tension between the two, hence the need to ensure proportionality and coherence. The new rules should seek to identify and address areas where AMLD4 and AMLD5 rules could be better aligned with the GDPR framework (see further discussion below). It would be essential that the possibilities for obliged entities to use and exchange information for AML/CFT will be reviewed and clarified, particularly in the context of Public Private Partnerships and of shared utilities. For instance, the GDPR commands that the collection of personal data be minimised in relation to its purpose as well as its storage/retention being strictly limited to a period not exceeding that necessary for the purposes for which it is processed. AMLD 4 however requires a large amount of data to be collected, processed and analysed for KYC-purposes, and is more prescriptive than FATF Recommendation 11, which only requires transaction data retention for 5 years after the transaction. The EBF recommends that the harmonising Regulation consider aligning to this more proportionate international standard.
- **EU Passport:** In respect of cross border services, member countries currently have discretion as to whether non-domestic institutions (who operate in a country though a passported license) are subject to local AML/CFT rules and reporting requirements or not. This should be harmonised and resolved through a reporting infrastructure between EU FIUs and obliged entities should always be able to file SARs through their home FIUs.
- **PAD**: In respect of basic banking services obliged entities with retail banking business are regularly faced with issues between the right to basic banking services and the requirements around restricting services or exiting customers due to insufficient KYC or AML/CFT concerns. These rules would need to be specified both in order to help obliged entities, but also to ensure that individuals do not meet unreasonable obstacles in trying to obtain basic banking services.
- **PSD II**: In regard to PSD II banks have encountered cases where PSPs may have been outside the Banks's AML risk appetite (e.g. for facilitating gambling stakes/profits in undesirable ways or for not agreeing on the identification of the BOs), but where they have not been able to refuse the customer relationship due to the PSD II requirement to give special consideration to requests to provide an account for PSPs and the unclarity as to what extent AML concerns can be used for refusing services, This is further aggravated by the fact that the local competition authorities often are unaware of AML issues connected to this segment of market participants. While PSD II provides a right for PSPs to be given special consideration when requesting "payment accounts services", there are different interpretations when it comes to e.g. the type of account that is to be provided, the responsibility for credit institutions to conduct transaction monitoring on such accounts and any requirements to identify and verify the PSPs customers (i.e. the

persons/entities who's funds are transferred through such accounts) and ultimately the right to reject PSPs payment account services on ML/TF grounds. Further guidance would be required regarding banks obligations in cases where banks consider PSP fall outside the scope of their risk appetite.

- **MiFID/CSDR**: As regards MiFID/CSDR rules, Central Securities Depositories (CSD) are not subject to the AML/CTF rules which mean that no KYC is done by the CSD and no ongoing transaction monitoring is conducted on their securities accounts. This makes it difficult for their customers (e.g. banks, brokers etc.) to have adequate 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/CTF responsibilities would be necessary. As long as CSDs are out of scope of the AML/CTF rules, it would be necessary for the banks, at least, to have guidance as to their AML/CTF responsibilities concerning securities accounts (e.g. transaction monitoring, etc.).
- **AML/CFT & Market abuse:** Suspicious transactions from an AML/CFT point of view could have links with market abuse (Regulation (EU) No 596/2014 and directive 2014/57/EU) and vice versa. Cooperation between competent authorities (e.g. authorities responsible for regulating financial markets and Financial Intelligence Units) is important to detect phenomena of market abuse and money laundering/terrorist financing. The EBF recommends the adoption of further guidance on reporting of ML/TF suspicions and market abuse suspicions, to minimise duplication and avoid any regulatory tensions

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

The EBF takes the view that an EU-wide approach to the question of effective information sharing could bring forward better outcomes. The European Data Protection Board (EDPB), established by the GDPR brings together national data protection supervisors and should play a key role in setting up a data driven compliance-by-design. An inclusive and pragmatic guidance on how to interpret the GDPR in an AML/CFT context should be developed in cooperation with the EBA, to ensure the trade-off between data protection and AML/CFT enforcement is balanced. The industry should also be consulted, to make sure the core challenges faced by banks in their every-day business are effectively and proportionately addressed.

A possible Regulation should be aimed at creating a framework that ensures that Financial Institutions are able to process personal data to achieve the AML/CFT objectives in line with the GDPR. We propose a number of aspects that could be included in the proposed Regulation, which should help reconcile the right to the protection of personal data with the AMLD/CFT requirements:

a) A legal basis possibly covering the following AML/CFT activities and clarifying that these activities come within 'legitimate interests' of financial institutions and that those financial institutions can choose the most adequate mechanisms to be compliant with the Regulation:

- The sharing of anonymous data, typologies and taxonomies with third parties in the context of public private partnerships
- The sharing of data with other financial institutions according to the data minimisation principle, potentially through a third party, notably to be able to better perform client due diligence processes, for instance through share utilities
- The access by financial institutions to relevant information contained in publicly owned registers

b) In relation to the activities under (a);

- Conditions under which such activities can be conducted, which should be previously considered together with the sector
- A thorough substantiation of the necessity for such measures in the preamble of the Regulation

c) Enumeration of what aspects fall under the duty of confidentiality and provisions to ensure data minimisation

d) Clear and proportionate rules on data retention (please also see section 13 of the EBF AML Blueprint), which:

- Do not require retention beyond what is truly necessary (for example, through reference to FATF Recommendations and guidance), consistent with GDPR principles
- Make clear that retention for the purposes of AML compliance are consistent with the storage limitation and data minimisation principles of GDPR
- Clarify that firms can continue to hold data beyond the period necessary for compliance with EU AML rules, where they have a legitimate justification

e) Recognition that exploring the use of new technology including advanced analytics or AI, or other initiatives that involve the processing of personal data to achieve the aim of the possible Regulation, constitute a legitimate interest of financial institutions

f) Due to the fact that financial entities have to process personal data to abide by the current AML/CFT legislation, it would be helpful to clarify in the Regulation that further data processing to achieve the purposes of such Regulation is compatible within the meaning of the GDPR. International AML/CFT standards already require the processing of personal data

g) Specific authorisation to use certain special categories of personal data and data relating to criminal convictions or offences, along with specific safeguards to protect the rights and interests of data subjects and recognising that the processing of personal data in the context of the possible Regulation is necessary for reasons of substantial public interest

h) Provisions to allow firms to limit certain privacy rights (in line with article 23 of the GDPR) when necessary in relation to the activities mentioned under (a) above, or indeed other sections of the Regulation

i) Provisions that urge member states to remove legal obstacles that could prevent the objectives of the regulation (for example look into the conditions under which in this context the national identification number could be used, etc.)

Recognising that exploring the use of new techniques or initiatives before implementing them structurally may constitute a legitimate interest of the financial institutions.

Provisions and safeguards on the use of data to train algorithms and specific reference to the principles of purpose limitation and compatibility of purposes.

PART 3 – Bringing about EU-level supervision

Question 1: What entities/sectors should fall within the scope of EU supervision for compliance with anti-money laundering / countering the financing of terrorism rules? *(Please highlight your response(s))*

- All obliged entities/sectors
- **All obliged entities/sectors, but through a gradual process**
- Financial institutions
- Credit institutions
    - Phasing should be firstly by risk and secondly on the grounds of supervisory body's familiarity (both sector and entity).

Question 2: What powers should the EU supervisor have? *(Please highlight your response – 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

Question 3: How should the entities subject to direct supervision by the EU supervisor be identified? *(Please highlight your response(s))*

- 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, "systemically important institutions" or "systemic risk posed by financial institutions" being methodically considered in this task.

The question assumes that the respondent has answered that an EU supervisor *should* have direct powers over some or all obliged entities. We do *not* believe that a future EU supervisor should directly supervise obliged entities. However, a future supervisor should alongside powers corresponding to (EU) Regulation 1093/2010 article 17, support national authorities with resources, competences and coordination, as well as more uniform AML/CFT standards and ensure that breaches of Union law are consistently investigated. It is important not to undermine the day-to-day supervision of the national FSAs. They ensure an in-depth knowledge on the specific risks of local markets and efficient cooperation with national law enforcement and tax authorities. There is a risk of unintended consequences if an EU supervisor were to have direct powers over obliged entities. Direct EU intervention should therefore be limited to breach of Union corresponding to the current regime.

Question 4: Which body should exercise these supervisory powers? *(Please highlight your response – 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

Regardless of the choice of a future EU body to exercise AML/CFT supervision, it should also cover the non-euro area and Member States with opt-outs on EUs Justice and Home Affairs regulation.

It is crucial that the division of power and mandate between the EU supervisor and the national supervisor be very distinct and clear. There must be no risk of obliged entities being caught between opposing views from the respective supervisors. Obliged entities should not face additional work loads and costs because of the establishing of an EU AML supervisor. Dual reporting must be avoided.
Art. 9a, para. (1) point c) of the EBA Regulation (1093/2010) as amended notably states that the EBA shall develop common guidance and standards for preventing and countering money laundering and terrorist financing in the financial sector and promoting their consistent implementation in particular by developing draft regulatory and implementing technical standards. The EBA should not seek to displace the risk-based approach through rules-based guidelines, as the risk-based approach is critical to the effectiveness of both national supervisors and of firms.

If other: please explain *(5000 characters maximum, including spaces and line breaks, i.e. stricter than the MS Word characters counting method)*

It is too early to take a firm position regarding the organisational setup. However, this setup would need to enable proper supervision of all Member States (not just Eurozone) as well as efficient governance without being limited in its powers by the entities it supervises. In addition, it must be adequately resourced (both in terms of headcount and expertise).

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

- A reinforcement of the AML/ CFT role of supervisors, focusing on risks, is required, together with a better use of the ESAs' powers and an enhanced role for the EBA as a rule setter.
- Supervisory fragmentation is a major challenge that must be addressed. All obliged entities should be under the same technical level of supervision, although the intensity and focus of supervision may vary in line with the risk-based approach.
- The Action Plan itself highlights that the different options can have different implementing and related costs. For this reason, we consider that any preference for one of the proposed options cannot be expressed without a preliminary impact assessment which takes into considerations different angles (and related costs/benefits) and impacts of the proposals.
- Moreover, we notice that all the options should be part of the questionnaire, included no change of the status quo (therefore the maintenance of the Supervision of NSA) or for example mechanisms that are in line with the subsidiarity principle providing that the European Supervisor (if any) can intervene whereas there are lacks or inefficiency of the NSA.
- EU supervisor would need to have a holistic picture not only on the geographies, but also with regard to types of entities involved. As can be seen in the Supra-National Risk Assessment, many kinds of entities are at risk of being exposed to financial crime. As the defence lines in e.g. banks are strengthening, financial crime executed through other types of entities are likely to increase as criminals look for the weakest link.
- An EU supervisor should have indirect overall powers over all obliged entities, ensuring quality in local supervision. To the extent it should have direct powers over certain entities, the criteria for these powers must be predefined, objective and based on risk. The division of power and the way to collaborate with local supervisors must be clearly defined for directly supervised entities. Overlapping supervision or reporting obligations should be avoided.
- In addition to its European powers, this supervisor could be engaged as a powerful European actor in international context, including supporting the EU Commission vis-à-vis the FATF.

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

Question 1: Which of the following tasks should be given to the coordination and support mechanism? *(Please highlight your response(s) and comment if you do not agree with proposed solution)*

- **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

Question 2: Which body should host this coordination and support mechanism? *(Please highlight your response – at most 1 choice(s) and comment if you do not agree with proposed solution)*

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

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

We have highlighted Europol in our answer above but would like to emphasize that Europol is not the only possible solution. The EBF strongly supports the creation of a European FIU function which 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. At the same time, the EBF strongly supports the role of Europol and Eurojust in providing the necessary cooperation between law enforcement and prosecutors across jurisdictions.

In addition, we would like to emphasize the following aspects:

- Harmonisation, clarification and strengthening of the Financial Intelligence Unit (FIU) functions across the EU/EEA.
- Both perspectives (cross border and local) need to be taken into account when improving the FIUs' role.
- Interconnection of FIUs is important to avoid wasteful duplication of work and diversion of scarce expert resources away from high-risk activity.
- SARs / STRs will not improve if banks do not receive more timely and relevant feedback and cannot match their AML/CFT data against operational police data. Improved coordination of FIUs should be progressed alongside support for Public Private Partnerships. The existing Europol Financial Intelligence Public Private Partnership (EFIPPP) should be supported by authorities and reinforced in its role as the first EU-wide PPP.
- EU reform should align with FATF best practices on information sharing, including sharing of operational data within the regulated sector in order to protect customers from fraud and protect the legitimate financial system from money laundering and terrorist financing.
- FIU.net has the ability to share data without disclosing sensitive information. Feedback should be able to be shared back to the relevant reporting entities – using the same data sharing mechanism. As a good practice, FIU needs to:
  - monitor the inputs from the reporting entities and their trajectory from SAR to conviction
  - ensure that feedback is safely shared to reporting entities

- ensure that feedback on the SAR trajectory is shared prior to media outlets sharing indictments/ convictions

PART 5 - Enforcement of EU criminal law provisions and information exchange

Question 1: What actions are needed to facilitate the development of public-private partnerships? *(Please highlight your response(s) and comment if you do not agree with proposed solution)*

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

Information sharing:

- An intelligence-led approach is the only way forward
- Further support must be provided to cooperation between all actors of the AML/CFT ecosystem (both from public and private sectors)
- Further push on PPPs is a must, by developing best practices in close consultation with the actors involved (including regulated professions and obliged entities) and by removing legal obstacles (see below)

Legal obstacles:

- The Action Plan is too vague about data protection. In particular, where certain processing would be helpful for the detection and prevention of money laundering but is not strictly required by legal obligations, it is unclear what would be permitted under GDPR. For example, it is unclear the degree to which firms can rely on 'legitimate interests' (GDPR Article 6(1)(f)) to share AML/CFT intelligence.
- EU GDPR AML guidance is needed to provide further clarification and leeway on data sharing, enabling obliged entities to exchange information with all actors of the AML/CFT ecosystem with a focus on:
    - the exchange of information with authorities in the framework of PPPs
    - the exchange of information with other private sector participants including shared utilities

- attention for focused, effective and proportionate exchange of information

Actions needed:

- Public-private partnerships (PPPs), where financial crime information can be shared between law enforcement and obliged entities, should be strongly encouraged and embraced first and foremost by public authorities. This should not be limited to the sharing of typologies and aggregated data but should include appropriate sharing of operational data.
- The existing Europol Financial Intelligence Public Private Partnership (EFIPPP) should be supported by authorities and reinforced in its role as the first EU-wide PPP.
- An effective EU AML/CFT framework will need to broaden the conditions under which operational data could be shared, including on a cross-border basis would be welcomed.
- A solid legal framework endorsed by, among others, data protection authorities, authorising under specific conditions such data sharing (including personal data) should be put in place.
- The mandate of Europol should be reviewed in such way that Europol would be entrusted with the competent EU law enforcement agency.

Regarding the answer 2 to question 3 above, we would light to slightly nuance the statement "Regulate certain aspects of the functioning of public-private partnerships". Regulating the basis for effectively sharing intelligence would be very helpful. At the same time, (over-)regulation on the wrong aspects could also hamper the trust, creativity, and intrinsic drive that have enabled PPPs to be successful in some countries so far.

PART 6 - Strengthening the EU's global role

Question 1: How effective are the following actions to raise the EU's global role in fighting money laundering and terrorist financing? *(Please comment if you do not agree with proposed solution)*

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

- Overall, synergies could be exploited with other EU legal frameworks and a global level playing field should be promoted, including through better alignment with FATF requirements and other applicable international standards.
- Establishment of the new EU AML supervisor and EU level FIU would give the Commission alongside with the Member States a stronger position to engage with FATF in a dialogue aiming at a full alignment of the EU and FATF AML standards and incorporation of FATF Mutual Evaluations into the EU SNRA and high-level efficiency evaluation processes.

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.)*

We refer to the attached EBF Blueprint for an effective EU AML/CFT framework – "Lifting the Spell of Dirty Money" of March 2020.