

## **ACTION PLAN ON AML/CFT European Commission's consultation AMAFI's answers**

AMAFI welcomes the opportunity to comment the European Commission's Action Plan ("EC's Action Plan") on anti-money laundering and countering financing of terrorism ("AML/CFT")<sup>1</sup> and supports the EU's ambition on this topic.

Nowadays, regarding the importance taken by AML/CFT issues, investment firms are legitimately subject to many requirements on this topic. Those are time and resource consuming at a time when the financial sector faces numerous challenges notably in terms of regulation and due to the current economic and social crisis. In that context, the implementation of the risk-based approach is particularly important as it allows actors to concentrate their resources where their analysis shows that they are especially necessary, which enables to be more effective and efficient.

In light of the significance of AML/CFT issues for its members, AMAFI set up a dedicated working group few years ago in order to help them better understand developments taking place at international, European and national levels as well as to implement various pieces of legislations. In particular, this working group has recently focused its work on the transposition of the 5<sup>th</sup> Directive<sup>2</sup> and the specificities of financial markets.

A Position Paper summarizing AMAFI's main stance on AML/CFT needs at European level has also be published ([AMAFI / 20-52](#)).

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<sup>1</sup> Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing, European Commission, 7 May 2020 ([link](#)).

<sup>2</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU ([link](#)).

## 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?**

	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?**

	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 2.1 - Should other tools be used by the EU to ensure effective implementation of the rules?**  
(5 000 characters maximum)

Not applicable.

**Question 2.2. - Additional comments (5 000 characters maximum)**

Our answer to the previous questions assumed that all Member States fully apply measures taken at European level thanks to the European supervisor.

Regarding the additional measures that should be taken, AMAFI considers only measures taken at European level within a Regulation can have positive effects to fight money laundering and terrorist financing. Indeed, only this level allows to have a harmony in the implementation of the requirements in all European countries which (i) avoids the "regulatory picking" carried out by the criminals and (ii) facilitates the implementation for the financial entities which have, for many, a European or even international dimension.

## DELIVERING A REINFORCED RULEBOOK

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**Question 3 - The Commission has identified a number of provisions that could be further harmonised through a 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 unit	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 4 – What other provisions should be harmonised through a Regulation? (5 000 characters maximum)**

AMAFI considers the following provisions should also be addressed through a Regulation to be harmonised in all EU's Member States:

- The definition of **business relationship**, including more details to identify those business relationships in specific activities such as financial markets ones.

- Requirements linked to **high risk third countries**: as exposed in our previous answer ([AMAFI / 20-25](#)), in AMAFI's view, enhanced due diligence measures to be implemented by obliged entities on business relationships or transactions linked to high risk third countries should be enforced through a Regulation to be harmonized. They also need to be harmonized with FATF's recommendations.

On that topic, AMAFI wishes to draw the attention of the EC to the difficulty for obliged entities to implement various additional measures depending on the deficiencies and vulnerabilities of each high risk third countries as it is proposed in EC's Action Plan (page 15). Eventually a distinction may be made between countries listed in a "grey list" (such as FATF's Jurisdictions under Increased Monitoring) and countries listed in a "black list" (such as FATF's High-Risk Jurisdictions subject to a Call for Action).

- The **definition of politically exposed persons (PEP)**: those business relationships can be difficult to identified by obliged entities due to diverging implementation across Member States. To facilitate this implementation, two solutions are possible: the first one, in the short run, is to enforce this definition through a Regulation, the second one, longer-term, could be to develop a European register of PEP containing nominative information and fulfilled by each Member State.

If, in the first instance, all the subjects cannot be enforced through a Regulation, AMAFI considers that the following subjects should be taken up as a priority:

- **Customer due diligence**, notably the ones concerning legal persons. Those requirements should be enough granular (eventually using a Level 2 text) not to allow Member States to require specific documents (national specific requirements are difficult to implement for financial entities located in various Member States). Those requirements must also take into account specificities of each sector / kind of business relationship.
- **Beneficial ownership registers** included the type of information contained in those registers and the methodology for obliged entities to access.

Regarding those registers, they should also be sufficiently reliable so that obliged entities should be allowed to only consult those registers to fulfil their obligations to identify and verify the identity of their business relationships' beneficial owners.

Finally, on this topic, a prompt delivery of the consolidated beneficial ownership register gathering the information hold on the 28 (or 27) different national registers would considerably facilitate the application of customer due diligence measures.

- Requirements linked to **high risk third countries** (*see above*).

Additionally, AMAFI considers some topics which are not currently dealt with should be developed at European level (eventually within a Directive at this stage):

- The **missions of AML/CFT supervisors** which, according to AMAFI, should not be limited to supervision / repression but should also include an advisory / support dimension (for example, in France, the ABC supervisor (AFA) and the market supervisor (AMF) have both missions).
- **De-risking**<sup>3</sup>: as mentioned by EBA in its latest call for input<sup>4</sup>, "de-risking" is a complex topic impacting the AML/CFT framework. Obligated entities need European Guidance on this topic.

<sup>3</sup> Due to their AML/CFT risks, obliged entities may decide not to enter into relationship with some kinds of clients.

<sup>4</sup> EBA calls for input to understand impact of de-risking on financial institutions and customers opens until 11 September 2020 ([link](#)).

**Question 5 – What provisions should remain in the Directive due to EU Treaty provisions? (5 000 characters maximum)**

Not applicable.

**Question 6 – What areas where Member States have adopted additional rules should continue to be regulated at national level? (5 000 characters maximum)**

Ideally, all the requirements should be taken at European level (in a Regulation) without possibility for Member States to adopt additional rules. However, given the time required to modify the European regulation and the need, in some situations, to be very reactive, it is advisable to leave a flexibility to Member States to adopt new requirements for a limited period of time, while the rules are changed at European level. Those temporary national requirements may concern:

- Additional measures which should be taken to combat financing of terrorism due to specific events or situations. Indeed, considering the importance of this issue, these measures must be taken extremely quickly. Those additional measures should include the possibility for Member States to decide national freezing measures.
- The list of obliged entities: due to the development of new technologies, new “economic” players may appear. Therefore, it is advisable to leave the possibility to Member States to introduce an obligation for those actors to apply AML/CFT requirements as quickly as possible.

**Question 7 – Should new economic operators (e.g. crowdfunding platforms) be added to the list of obliged entities? (5 000 characters maximum)**

Yes, in AMAFI’s view, **all economic operators and financial entities should be added to the list of obliged entities**. Indeed, if not:

- criminals will use those actors which would make the efforts made by obliged entities less useful and would call into question the quality of the global AML/CFT framework;
- this would create a competitive distortion between the different economic actors to the detriment of the obliged entities (the implementation of AML/CFT requirements being very time consuming and costly).

**Question 8 – 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 (5 000 characters maximum)**

As mentioned in the previous answer, to ensure a strong AML/CFT framework, in AMAFI’s view, all economic operators (included FinTech) should be contained in the list of obliged entities even if specific cases of money laundering or terrorist financing have not yet been identified.

**Question 9 – 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		

**Question 9.1 – Are there other EU rules that should be aligned with anti-money laundering / countering the financing of terrorism rules? (5 000 characters maximum)**

AMAFI considers it is essential that a **Guidance be published at European level on the link between GDPR<sup>5</sup> and AML/CFT requirements** (notably regarding information and documents that can be requested and kept, information that can be shared within the group or with other obliged entities, staff screening, etc.). Today, interpretations differ between Member States, which makes the implementation of these two regulations extremely complex for obliged entities with activities in several European countries. In our view, this guidance is also important for the development of public-private partnerships which requires sharing information.

AMAFI also considers as important, for obliged entities with market activities to align definitions of “client” established by Article 4.9 of **MiFID II<sup>6</sup>** and Article 3.13 of the 4<sup>th</sup> AML Directive<sup>7</sup> (being understood that beneficial owners should be added to that definition for AML/CFT purposes). This demand is a continuation of our request to add details on the concept of business relationship for certain activities.

AMAFI also wishes to emphasize that the European AML/CFT rules also have interference with other extraterritorial regulations such as FATCA.

<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([link](#)).

<sup>6</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([link](#)).

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ([link](#))

**Question 9.2 – Additional comments (5 000 characters maximum)**

AMAFI considers AML/CFT risks can significantly affect obliged entities (as shown by recent scandals), to consider this possibility, it could be a good thing to establish a relation between prudential regulations and AML/CFT ones (as well as between both supervisors).

Regarding fit&proper tests, AMAFI considers “AML/CFT check” as a key element both for directors / administrators and compliance staff. Indeed, if a member of the executive body or a member of compliance staff has a link with criminal or terrorist activities it could use the obliged entity without being identified. This would compromise the integrity of the AML/CFT framework.

**BRINGING ABOUT EU-LEVEL SUPERVISION**

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**Question 10 – 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

**Question 11 – What powers should the EU supervisor have? (at most 1 choice)**

- 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 12 – 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

**Question 13 – Which body should exercise these supervisory powers? (at most 1 choice)**

- The European Banking Authority
- A new EU centralised agency
- A body with a hybrid structure (central decision-making and decentralised implementation)
- Other

**Question 13.1 – if other: please explain** (5 000 characters maximum)

Not applicable.

**Question 14 – Additional comments** (5 000 characters maximum)

At this stage, AMAFI considers the ideal situation would be to have a **European supervisor** who:

- (1) has within its scope **all obliged entities** (*i.e.* financial and non-financial entities) but whose resources would be allocated to prioritize “key” obliged entities and obliged entities with the highest risk.

If the establishment of such a supervisor seems complex in the short term, it could be envisaged, **at first, to subject only the financial entities** - as shown by the recent scandals, this Authority must be operational and effective in a very short time frame - and ultimately come to a supervisor encompassing all the obliged entities.

This solution also presupposes that this Authority is endowed with **sufficient resources to take into account the specificities of each of the sectors** that fall within its scope of supervision (and not to only focus on banking sector).

- (2) has **indirect supervision powers over all obliged entities, with the possibility to directly intervene in justified cases.**

As mentioned in our answer to the previous consultation ([AMAFI / 20-25](#)), to be efficient, this supervisor should not replace national ones that are supposed to have the deepest knowledge of their national specificities unless those national supervisors have significant disabilities.

This European supervisor should **communicate guidelines** to the national ones (who would be attached to him) for the harmonization of the various processes and eliminate the current differences in supervision.

In order not to complicate the supervision of the obliged entities, **particular attention should be paid to the absence of double supervision**: an obliged entity will either be under the supervision of its national supervisor (normal situation), or, in the event of a deficiency of this national supervisor under the sole supervision of the European supervisor.

Nevertheless, AMAFI considers that it is necessary to obtain the results of the various analyses mentioned by the European Commission in its Action Plan to position itself more precisely on this important topic.

## ESTABLISHING A COORDINATION AND SUPPORT MECHANISM FOR FINANCIAL INTELLIGENCE UNITS

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**Question 15 – 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

**Question 16 – 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

**Question 17 – Additional comments (5 000 characters maximum)**

Regarding those questions, AMAFI only answers on matter that concern it (*i.e.* topics which have a direct impact on obliged entities) and proposes to develop the selected elements:

- **common templates to report suspicious transactions** (“STR”): the development of such templates could be useful, especially for entities with cross-border activities. Nevertheless, to be helpful such templates should take into account the specificities of each sectors (for example, in a market transaction there is no “account” linked to the operation (at least, from the broker’s view), so it is impossible to fulfil the “account number” line of STR).
- **issuing guidance**: in line with our previous answers, AMAFI considers the harmonization of rules at European level as essential. AMAFI is therefore favorable for Guidance to be issued at European level (as long as draft guidelines are consulted with the private sector).
- **assessing trends**: AMAFI is extremely favorable to the communication of trends to obliged entities. This communication can only be positive for the improvement of the overall system (FIUs are best placed to identify these trends). However, AMAFI wishes to point out that, to be useful for the various sectors, these trends must not be limited to the typologies linked to the banking sector. Currently, there are few or no trends and typologies related to the financial markets’ activities, it would seem very useful that work on this subject be carried out by the FIUs concerned.
- **facilitating joint analyses of cross-border cases**: in AMAFI’s view it could be useful to have a better coordination between FIUs to allow the prompt return of funds, especially in fraud situation.

Additionally, regarding the European “coordinator”, AMAFI wishes to stress the need for obliged entities to keep a single contact with their national FIUs and not with this coordinator.

## ENFORCEMENT OF EU CRIMINAL LAW PROVISIONS AND INFORMATION EXCHANGE

### Question 18 – 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

### Question 19 – Additional comments (5 000 characters maximum)

**AMAFI is supportive of the development of public-private partnerships** which are considered very effective in the countries which have already implemented them. These partnerships allow the exchange of information in a restricted circle, for the benefit of the various stakeholders in AML/CFT and, also allow to be reactive in an area where speed is an essential factor. Nevertheless, as mentioned by the EC, this development should be regulated by the definition of specific rules and the issuance of guidance and good practices.

Regarding “information exchange”, AMAFI considers two other practises should be facilitated and regulated by the EC:

- the exchange of information between entities of the same group;
- KYC sharing platforms notably between entities which do not belong to the same group.

## STRENGTHENING THE EU’S GLOBAL ROLE

### Question 20 – How effective are the following actions to raise the EU's global role in fighting money laundering and terrorist financing? (5 000 characters maximum)

	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					

**Question 21 – Additional comments (5 000 characters maximum)**

At the stage, regarding the diversity of national AML/CFT frameworks, which are, for many of them, much less restrictive than the French system, it does not seem to be a good idea, for the improvement of the international standards, to only present the “European” requirements in FATF’s meetings. Indeed, in AMAFI’s view, the strong French requirements should be supported – by French Authorities – to enhance the international framework.

Once the Regulation has been entered into force and all the Member States apply the same rules within the European Union, this question may be asked again.

