
Opinion Statement PAC 1/2019 on the European Commission Draft Supranational Risk Assessment Report for Anti-Money Laundering Risks to Services Provided by Tax Advisers

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CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, representing more than 200,000 tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Wim Gohres, Chair of the CFE Professional Affairs Committee or Aleksandar Ivanovski, Tax Policy Manager, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

Statement

CFE welcomes the opportunity to contribute to the European Union intra-service consultation on findings related to the regular supranational risk assessment (“SNRA”) for anti-money and terrorist-financing purposes (“AML/ TF”). We are pleased to participate in the ongoing dialogue with the European Commission and other stakeholders at EU level, putting forward experts’ opinions of tax advisers as obliged entities for AML purposes. Such an exercise is no doubt helpful in strengthening the European anti-money laundering compliance framework in the ongoing process of identifying, managing and mitigating the risks as set out in national legislation implementing the 4th EU Anti-Money Laundering Directive.¹

Anti-money laundering is an ongoing work priority for CFE Tax Advisers Europe and will continue to be one. CFE has consistently updated our member organisations of AML developments at EU level, including by creating a dedicated Anti-Money Laundering Working Group within the CFE Professional Affairs Committee.

In April 2018, CFE conducted an AML survey among our member organisations by way of a questionnaire. The survey aimed to gather and disseminate comparative data on the implementation status of the 4th AML Directive of relevance for tax advisers as obliged entities. Particular focus was given to the national risk assessments, beneficial ownership registers, supervisory obligations of CFE member organisations, if any, and the national oversight regime, as well as any encountered issues in relation to AML compliance.²

Background

In June 2017, the European Commission published a supranational risk assessment report related to the AML/ TF risks affecting the EU Single Market pertaining to legal professionals, tax advisers, accountants, high value good dealers and real estate agents.³ Prior to that, the European Commission presented in March 2017 a draft preliminary analysis. CFE welcomed the opportunity to discuss the draft report at a stakeholder consultation meeting of 14 March 2017 concerning the European Commission’s preliminary analysis on the risk scenario at EU level, as well as mitigating measures. CFE is pleased to comment on the present draft report circulated to stakeholders, which was provided for consultation purposes at the end of 2018 and does not represent the final and official position of the European Commission.

Back in 2017, the report identified professional services that are considered potentially vulnerable to money laundering/ terrorism financing risks affecting the internal market, covering all professionals falling within the personal scope set out in the 4th AML Directive, in addition to other relevant categories. The SNRA analyses the money laundering/ terrorism financing vulnerabilities identified at EU level concerning the legal framework and its effective application, without prejudice to any mitigating measures that some Member States may decide to apply in response to their own national money laundering/ terrorism financing risks. Under Article 6 of the 4th AML Directive, in the event that a Member State decides not to apply the suggested recommendations in their national anti-money laundering and counter-terrorism financing regimes they should notify the Commission of their decision and provide a justification for it (“comply or explain”).⁴

¹ Pursuant to Article 6 of the Directive (EU) 2015/849 - 4th AML Directive, every two years, or more frequently if appropriate, the European Commission shall submit a report to the European Parliament and to the Council on the findings resulting from the regular risk assessments and the action taken based on those findings.

² The countries that participated in the survey include: Austria, Belgium, Croatia, Czech Republic, Ireland, Italy, Lithuania, Luxembourg, Russia, Spain, the Netherlands and the United Kingdom. The CFE survey on the implementation of the 4th AML Directive is available on the following link: <https://taxadviserseurope.org/blog/portfolio-items/results-of-the-cfe-survey-on-the-implementation-of-the-4th-aml-directive/>

³ Report from the European Commission to the European Parliament and Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities of 26.6.2017

⁴ *idem*

Risk Awareness, Threat and Vulnerability of the Tax Advisory Profession

CFE welcomes Commission's assessment that tax advisers benefit from strong organisation at European and national level, and are required to adhere to strict ethical and professional conduct rules.⁵ As such, a robust organisational framework coupled with ethical and professional conduct rules mitigate to a certain extent the vulnerability of the profession to anti-money laundering risks. More generally, the document operates with the term "tax adviser" but there is a difference between affiliated tax advisers and non-affiliated tax advisers. Affiliated tax advisers are registered in professional associations, have professional rules and codes of conduct which impose on them rules of compliance with the national legislation. Non-affiliated ones are not subject to such rules.

Whilst we recognise that there always are improvements to be made, CFE member organisations that exercise supervisory powers in relation to tax advisers report that robust mechanisms have been put in place. Similarly, there is a continuous improvement in guidance issued to members in order to improve the money laundering/terrorism-financing risk awareness.⁶ In relation to vulnerability of the sector, under risk awareness, the report comments that 'supervisory bodies are not still well equipped to detect this kind of abuse (lack of 'fit and proper' test requirement)'. Our members report that a 'fit and proper' test is indeed put in place⁷.

CFE points out that the definition of money laundering is very broad which means that the threshold for involvement in money laundering is very low. For instance, once the proceeds of a crime have been entered into a legitimate environment, every subsequent payment or transfer is considered money laundering. This also makes it very difficult to discern possible money laundering.

The 4th AML directive combatting money laundering and terrorist financing is by its nature aimed at those intermediaries that are committed to adhering to the law. Intermediaries that are willing to participate in money laundering or terrorist financing activities will simply not comply with the directive. It is equally important to point out that the vast majority of tax advisers in the EU do not want to participate in money laundering or terrorist financing. The SNRA states that the sector could quite often be involved in management of complex transactions. However, CFE feels that it would be better to substantiate this claim for future comparisons with relevant statistics. CFE also points out that the majority of complex transactions will not be related to money laundering. Therefore, the suggestion that the sector as a whole is often involved in money laundering through complex transactions simplifies the situation to the point of being unfair. It does seem fair to expect that a small percentage of the sector may be involved with money laundering. Those who are actively involved are covered by criminal law, the EU directive is in fact aimed at those who are vulnerable to be passively involved.

It is also important to point out that infiltration of the sector by criminal organisations by nature will be a very small section of the sector. For the SNRA it would be valuable to underpin this statement with statistics, to be able to discern possible trends going forward.

⁵ In the descriptive section of the document, the statement concerning the tax advisers of the Czech Republic should read: "In the Czech Republic tax advisers may represent their clients before court in fiscal matters but not in criminal tax matters."

⁶For instance, the Belgian Institute of Certified Accountants and Tax Advisors (IAB/IEC), a CFE Member organisation from the Kingdom of Belgium, the Institute consistently provides high level of information to the members and carries out on-site and off-site quality reviews. Members are required to learn about the AML risks and profiling via updates and seminars organised by the Institute on AML matters. On basis of the inspections carried out by the Institute, the vast majority of tax advisers and accountants apply their AML obligations taking into account the risk-based approach.

⁷ For instance, the Chartered Institute of Taxation (CIOT), a CFE Member organisation from the United Kingdom, impose a 'fit and proper' test before an individual may become a member of the organisation. Each year members are asked a number of 'fit and proper' questions including whether they have any criminal convictions, whether they have been disciplined by a professional body or have been disqualified as a director or trustee. All supervised firms are required to confirm that they have obtained Disclosure Barring Service certificates (also referred to as a 'criminality check') for their business owners, officers and managers. Sole practitioner firms must submit their Disclosure Barring Service certificate to CIOT. More generally, the United Kingdom has responded robustly by setting up the Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

Further, the European Commission's preliminary report states that law enforcement agencies ("LEAs") have evidence that organised crime organisations recurrently use tax advisors advice and seek out the involvement of this sector in their money laundering schemes. A consistent message among our member organisations is that, regrettably, such evidence is not shared with tax advisers or anti-money laundering supervisory bodies, where applicable. If more information were made available to the tax advisory bodies, while recognising the security constraints, it would help make tax advisers aware of what they are apparently missing and currently failing to report.

In respect of the assessment that competent authorities and Financial Intelligence Units consider tax advisers insufficiently aware of the risks posed by opaque structures and mechanisms that are put in place to obscure beneficial ownership, CFE would welcome the opportunity to discuss any evidence that supports this finding of the Commission.

Whilst we recognise that there always are improvements that can be made, CFE member organisations that exercise supervisory powers in relation to tax advisers report that robust mechanisms have been put in place. Similarly, there is a continuous improvement in guidance issued to members in order to improve the money-laundering/ terrorism-financing risk awareness.⁸ It is positive to note that the level of reporting in the tax advisory/ accountancy sector is better than in other sectors, such as reporting by lawyers, but it is not clear whether the EU report has taken account of the privilege reporting exemption which can apply in specific circumstances.⁹ By way of example on the level of reporting, the Belgian Institute of Certified Accountants and Tax Advisors notes that the number of suspicious transaction reports ("STRs") reported to the Belgian FIU is constantly increasing. The Belgian FIU reported back in 2013 that the STRs are of 'good quality' level.

More generally, CFE recalls that there is no legal obligation in the European countries for taxpayers, individual or corporate, to have their tax affairs dealt with or signed off by a tax adviser.¹⁰ Taxpayers are at liberty to have their tax affairs managed by their internal staff or by themselves directly. We therefore believe that due to the obliged entities' obligation to report suspicious cases of money laundering or terrorism financing, for persons involved in such dealings, consulting an independent tax adviser could potentially bear an additional risk of being exposed that one may choose to avoid. CFE recalls that in its previous submissions it was assessed that the likelihood for the tax profession to be misused for money laundering or terrorism financing purposes remains low, in relation to services typically offered by tax advisers.

Separation of Money Laundering and Terrorism-Financing Risks

CFE member organisations observe that while the EU supranational risk assessment report has combined money laundering and terrorism financing, and rated both as posing a very significant risk, some national risk assessment reports conclude that the money-laundering risk for accountancy services (which included tax) was indeed high. Conversely, such assessments considered accountancy services not to be attractive for terrorist financing, and there was no specific evidence of these services being abused by terrorists. Consequently, the terrorist financing risk associated with the tax sector was assessed to be low.

⁸For instance, the Belgian Institute of Certified Accountants and Tax Advisors (IAB/IEC), a CFE Member organisation from the Kingdom of Belgium, consistently provides high level of information to the members and carries out on-site and off-site quality reviews. Members are required to learn about the AML risks and profiling via updates and seminars organised by the Institute on AML matters. On basis of the inspections carried out by the Institute, the vast majority of tax advisers and accountants apply their AML obligations taking into account the risk-based approach.

⁹ Article 34(2) of Directive EU/2015/849 of 20.5.2015

¹⁰ On basis of data contained in the European Professional Affairs Handbook for Tax Advisers, (CFE & IBFD 2013), available at <https://taxadviserseurope.org/blog/portfolio-items/cfe-european-professional-affairs-handbook-for-tax-advisers/>

The effectiveness of the SNRA would therefore benefit from a more detailed and nuanced approach regarding terrorism financing. As it is reasonable to assume, without having access to relevant statistics, that the majority of money laundering schemes are facilitated by a minority of the sector, the same would apply *a fortiori* to terrorism financing. By nature, terrorism financing will only be a small portion of the activities. In addition, there are indications¹¹ that terrorism financing is primarily done via self-financing and to some extent through foundations and non-profit organisations and via official and informal banks, bitcoins etc. Tax advisers are hardly involved in these areas. Therefore, the SNRA considering the threat of terrorism financing in conjunction with money laundering takes a very high-level approach, which is not helpful for a sound analysis of the risk scenario. Taking this into account, CFE feels that the threat level for terrorism financing should not be set on the same level as money laundering as very significant, as it does not represent the statistical probabilities that the sector is actually involved.

CFE invites the European Commission to consider national risk assessments for the tax profession and how such assessments could potentially impact the risk profile at EU level. In CFE's view, the assessment of the vulnerability for terrorism financing should be lower than that of money laundering.

Mitigating Measures

Tax advisers as obliged entities do report matters to their national Financial Intelligence Units ("FIUs"), whilst the FIUs provide some form of generic feedback on reports pursuant to the Directive, usually via their annual reports. For instance, such feedback could include total number of reports made by each sector, but as a rule tax advisers do not receive any feedback in respect of the reports they have made. Consequently, there is significant uncertainty among tax professionals as to the practical implications of their reporting. We invite the relevant authorities to consider providing feedback to tax advisers on their respective cases as well as relevant trends and sector-specific statistics. Such developments would strengthen the understanding among tax advisers on the importance of making an anti-money laundering (STR) report.¹²

CFE considers that a mitigating factor in reducing the money laundering risk is the mandatory education provided for under the directives. CFE would welcome a discussion on the effectiveness of the EU AML Directives in reducing the risk of money laundering and terrorism financing. CFE invites the European Commission to consider why, with all the existing AML directives and procedures, the risk for tax advisers as a whole, has not reduced over the years, compared to the initial risk assessments.

CFE continues to support the baseline scenario that would entail full implementation and enforcement of the existing EU anti-money laundering framework that is already in force (4th and 5th Anti-Money Laundering Directives) with introduction of more robust feedback mechanisms, where appropriate.

About CFE Tax Advisers Europe

CFE Tax Advisers Europe is a Brussels-based umbrella association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations (tax institutes, associations and chambers of tax advisers) from 24 European countries, representing more than 200,000 tax advisers.

¹¹ For instance the National Risk Assessment from the Netherlands

¹² With reference to the Mitigating measures for competent authorities, the Chartered Institute of Taxation (CIOT) already produces an annual report for HM Treasury and in future, this will be made public. Currently the CIOT's report along with all the other AML supervisors' reports are combined into one document which is made available to the general public

CFE's role and mission is to:

- Safeguard the professional interests of tax advisers and assure the quality of tax services provided by tax advisers;
- Exchange information about national tax laws and contribute to the co-ordination and development of tax policy in Europe;
- Maintain relations with the European institutions, the OECD and other international and national bodies, and share with the European Union institutions the tax technical experience and insight of our members from all areas of taxation;
- Seek to provide the best possible conditions for tax advisers to carry out their profession;
- Inform the general public about the role, mission and the services that tax advisers provide.