
Opinion Statement PAC 3/2020 on the European Commission Public Consultation on an Action-Plan for a Comprehensive Union Policy on Preventing Money Laundering and Terrorist Financing

**Issued by the CFE Professional Affairs Committee
Submitted to the European Commission on 26 August 2020**

CFE Tax Advisers Europe is a Brussels-based organisation representing national tax institutes and associations of tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, associated with more than 600,000 tax advisers via the Global Tax Advisers Platform (GTAP). 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 Tax Advisers Europe welcomes the opportunity to contribute to the European Union public consultation on further strengthening the Union policy and legislative framework on anti-money laundering and criminal/terrorist financing purposes (“AML/ CTF”).

We note that the overall objective of the Communication on an Action Plan for a comprehensive EU policy on preventing Money Laundering and Terrorist Financing is to strengthen the robustness of the EU AML legal framework, both within EU and globally.¹ We are fully supportive of this objective. The EU has been at the forefront of the global fight against financial crime and illicit money flows, through application of a regulatory framework developed over 30-years period, in addition to case-law of the Court of Justice of the EU, which has recognised that the objective of fighting money laundering and terrorism financing is essential for maintenance of public order, and as such, can justify a restriction of the fundamental freedoms guaranteed by primary EU law.² The complexity of the EU legal framework, has produced some unintended consequences and loopholes which were exploited by criminals, notably in the financial sector. To the extent the harmonised approach at EU level takes into account the specificities of the obliged entities from the non-financial sector, CFE is supportive of further action to addresses the deficiencies of the EU AML framework, as specified in the Action Plan of May 2020.

In addressing these shortcomings, CFE recommends the future EU legislative efforts to be based on the following guiding principles:

- Targeted at addressing the risks of AML/CTF and away from the risks of encouraging a tick box administrative approach;
- Efficiency and effectiveness of the EU AML/CTF regime on basis of a risk-based approach and compliance;
- Harmonised approach that avoids ‘one-size-fits’ all legislation, considering sector specific features for obliged entities from the non-financial sector;

¹ Communication from the European Commission for a comprehensive EU policy on preventing Money Laundering and Terrorist Financing of 7 May 2020, C(2020) 2800 Final.

² Case C-212/11 Jyske Bank Gibraltar

- Simplification of any new and existing rules and their proper enforcement across the board and Member states;
- Certainty for the obliged entities through regulatory guidance and feedback to the supervisory bodies, where appropriate;
- Proportionate response to the risks identified in an AML/CTF context;
- EU oversight body (rather than pan-European supervisor) that builds on and supplements the work of national supervisory bodies, complemented and coordinated by an EU-oversight body;
- Prominent role for the European Commission within FATF, as an international standard setting body in an AML context;
- Full implementation of the existing AML legislation in place with introduction of robust feedback mechanisms towards obliged entities.

CFE is fully supportive of the Action Plan ambitions to ensure effective implementation of the existing EU AML/CTF legislation in place, in particular by ensuring timely transposition of the 4th and 5th AML Directives, if necessary through the infringement procedure. 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 with introduction of more robust feedback mechanisms, where appropriate.

CFE welcomes the possibility for a more harmonised approach at EU level, recognising that the system is as strong as its weakest link (or Member state). Whilst we understand that the scope and competences of a possible EU supervision are a matter of further discussion, we would welcome an approach that builds on and supplements the work of national supervisory bodies which could potentially be complemented and coordinated by an EU-supervisory body. In essence, such a body will oversee and coordinate the national supervisory capacity, rather than establish a new body with direct supervisory powers throughout the EU. Indirect powers are therefore more appropriate than direct powers of inspection, in relation to the non-financial sector. Direct supervisory powers should be confined on basis of risk assessment of the obliged entities and of the sector concerned.

As stated in our previous statements, raising awareness of the Union's anti-money laundering rules among tax advisers as obliged entities, as well as exchange of views and best practices among the CFE constituent member organisations, has been a key work priority for CFE Tax Advisers Europe. CFE has consistently sought to update 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. The 12th European Conference on

Tax Advisers' Professional Affairs, organised in November 2019 ("Making Anti-Money Laundering More Effective For Tax Advisers"), considered the international approach against tax and financial crime as well as the risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. CFE sought to provide a forum for tax advisers and international stakeholders to address issues of relevance arising out of the international AML regulatory environment. Specifically, the forum discussion dealt with problems arising from various public revelations such as the Panama Papers, and how those affected the public industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the Unit on Tax & Crime address these problems.

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.³

In June 2017, 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 welcomed 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. We agree with Commission's assessment that 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. CFE highlights that 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, which is an issue that merits further consideration.

Tax advisers as obliged entities 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

³ 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/>

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 would therefore welcome feedback to tax advisers from relevant national (or supranational) authorities 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.** This could also potentially improve the quality of reports made to the FIU as the tax adviser would have a better understanding of how FIUs use the data and what is of most value to them. In addition, the European Commission's reports state that law enforcement agencies ("LEAs") have evidence that organised crime organisations recurrently use tax advisers' 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.**

The alternative is that tax advisers routinely turn work away from clients in higher risk locations or industries, absent any indicator of criminal activity. It is also not clear to what extent professionally qualified tax advisers are involved in providing advice or assistance to organised crime organisations. As mentioned earlier the members of the professional bodies belonging to CFE Tax Advisers Europe set high ethical standards which include a requirement to keep up to date with and observe technical and legal obligations such as AML and CTF. However, it is possible for an unqualified person to simply describe themselves as a tax adviser and be free to practise without any of the constraints imposed by a professional body. This is especially (although not exclusively) in member states where the profession is not regulated nor the title protected. Some analysis as to the category in which the problem with tax advisers lies would be helpful.

There is a continuous improvement in guidance issued to members in order to improve the money-laundering/terrorism-financing risk awareness.⁴ 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.⁵ CFE recalls that in its previous submissions it was assessed that the likelihood for the tax profession to be

⁴For instance, the Belgian Institute of Certified Accountants and Tax Advisors, 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.

⁵ Article 34(2) of Directive EU/2015/849 of 20.5.2015

misused for money laundering or terrorism financing purposes remains low, in relation to services typically offered by tax advisers.

More generally, although it seems there has been some improvement in enforcement over the years there still appears to be little consequence for a Member state which fails to implement an AML Directive on a timely basis or to comply with the requirements of the Directive. Whilst we appreciate the infringement procedure against such Member states, we suggest that the Commission should publicly adopt and stick to a zero-tolerance policy to late or inadequate implementation of AML legislation.

Should the Commission proceed with Regulation at EU level, CFE in principle does not object to such an approach to the extent the harmonised legislation avoids ‘one-size-fits’ all, taking into account sector specific features for obliged entities from the non-financial sector. Simplification of any new and existing rules and their proper enforcement across the board and Member states should be prioritised alongside certainty for the obliged entities through regulatory guidance and feedback to the supervisory bodies, where appropriate.

An EU oversight body (rather than pan-European supervisor) that builds on and supplements the work of national supervisory bodies, complemented and coordinated by an EU-oversight body would be welcome.

With respect to the list of potential issues covered by a Regulation, CFE notes that existing AML rules require from AML supervisors to adopt a risk-based approach by applying greatest resource to the greatest risk. In order to be able to do that tax advisers need to risk assess their practice/clients and have appropriate policies and procedures. For example, the UK legislation requires that these are recorded in writing so that the tax adviser can demonstrate this has been done. It also helps to focus the thinking of the adviser on where the risks actually lie rather than simply collecting data. We suggest these requirements could be added to the list of issues covered by potential Regulation at EU level.

CFE can see an argument for including new economic operators, such as crowdfunding platforms to the list of obliged entities for AML/CTF purposes, given the risk of them being used for laundering ‘dirty’ money. However, we would suggest there should be a *de minimis* threshold to remove small donations from such Regulation. Consideration could be given to using the High Value Dealers cash limit of 10.000 EUR.

With respect to Commission’s consideration to enhance through guidance or legislative changes the consistency of a number of other EU rules within the anti-money laundering / CTF framework, from CFE’s perspective such

a harmonised rule book makes sense: it would help to establish a consistent approach that can be taken across EU Member states. However, it is vitally important that the emphasis is placed on steps which help prevent money laundering and terrorist financing rather than on administrative processes which can lead to “ticking the box” approach. Greater transparency (e.g. beneficial ownership registers) and better information sharing from FIUs and between supervisors, together with a focus on the areas of greatest concern could make a positive contribution towards the fight against ML and CTF at pan-European level.