

**EUROPEAN COMMISSION**

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

The Acting Director General

**Call for advice to the EBA
for
defining the scope of application and the enacting terms of a Regulation to be
adopted in the field of preventing anti-money laundering and terrorist financing**

Pursuant to Regulation (EU) 2019/2175¹, the EBA has been granted new powers to lead, coordinate and monitor EU financial supervisors' fight against ML/TF, as well as a redefined objective to actively contribute to preventing the use of the Union financial system for the purposes of money laundering and terrorist financing.

In its Communication *Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework* and in the accompanying Commission reports of July 2019 (the AML package), the Commission has highlighted the need to ensure a comprehensive EU policy on AML/CFT. This includes, alongside better implementation of existing rules, the need to carefully assess whether and how a more detailed and harmonised rulebook may contribute to a more effective Union policy in the field.

This view is supported by the Union co-legislators. In its resolution of 19 September 2019, the European Parliament pointed to the need to identify initiatives that could enforce anti-money laundering and countering the financing of terrorism actions at EU level. On 5 December 2019, the Economic and Financial Affairs Council adopted *Conclusions on strategic priorities for anti-money laundering and countering the financing of terrorism*, inviting the Commission to explore actions that could be undertaken to enhance the existing framework, including by proposing a regulation to set out directly applicable rules.

The EBA, together with the other European Supervisory Authorities, has repeatedly highlighted the benefits of a harmonised approach to achieve greater consistency and convergence in the application of Union AML/CFT rules. One notable example is the *Joint Opinion of the European Supervisory Authorities on the risks of money laundering*

¹ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (Text with EEA relevance) (OJ L 334, 27.12.2019, p. 1.)

and terrorist financing affecting the European Union's financial sector of 4 October 2019, .

Against this background, the Commission services are seeking technical advice from the EBA with respect to defining the scope and enacting parts of a future Union Regulation in the field of AML/CFT, as well as its main possible impact and the interaction with the existing Directive.

Considering the relatively short timeframe available for producing its advice, Commission services do not expect the EBA to either collect new data or publicly consult on its findings.

In this context, **Commission services would like to invite the EBA to:**

- *Identify the areas of the amended 4th AML Directive under the EBA's competences that could be subject to a more harmonised set of rules (i.e. moved to a Regulation or to more detailed rules under a revised Directive), including with a view to facilitate supervision at European level*

In the Commission services' preliminary view, the relevant areas pertain in particular to the implementation into EU law of international standards in the field of AML/CFT. This may include provisions laying down the list of obliged entities in the financial sector, customer due diligence requirements, internal controls, reporting obligations, third party reliance, obligations on competent authorities responsible for supervision, cooperation mechanisms between competent authorities as well as sanctions.

- *Identify which new areas under the EBA's competences could be covered that would reinforce the Union AML/CFT legal framework*

Any possible future directly applicable act may need to include provisions relating to new entities, products or services, which would allow their development whilst protecting the integrity of the Union financial system. Such provisions may be included in the Regulation or be defined as areas of future development through empowerments for specific regulatory and implementing technical standards.

- *Identify whether and in what manner national rules transposing the AML Directive by introducing more stringent standards ("gold-plating") should be reflected in a Regulation as new European standard.*
- *Assess the interaction of a Regulation with the amended 4th AML Directive*

In the Commission services' preliminary view, a dedicated AML/CFT Regulation cannot replace in its entirety the current legal framework. Given the specific nature of the AML Directive, which seeks to prevent money laundering and terrorist financing, some provisions of the AMLD govern the cooperation among different authorities, including law enforcement authorities or intelligence services, and sets out predicate offences or sanctions which, by their effect, may be qualified as criminal in nature. These issues would be better dealt with in a Directive.

- *Assess the interaction with the FTR*

The legal framework in force also includes provisions on the transfer of funds as set out in Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds. Such provisions may be integrated into a new set of directly applicable rules in the area of AML/CFT, provided this may enhance the effectiveness of the application of the rules and contribute to setting out a unitary and comprehensive legal framework.

- Assess, to the extent possible, any impediments, of legal or technical nature in the adoption of a set of directly applicable rules in the area of AML/CFT

- Assess, to the extent possible, any impediments of legal or technical nature affecting the consistency between the AML/CFT framework and other relevant legislation under EBA competence

Ensuring consistency within the wider EU legislative framework would facilitate the activity of both competent authorities and obliged entities. It is important to assess whether other instruments under the competences of the EBA should be adjusted to create better synergies with the anti-money laundering framework. This may include, for example, the Deposit Guarantee Schemes Directive, the Payment Account Directive, the Capital Requirements Directive.

Final considerations

The Commission services are aware that time and resource constraints may restrict the range of analysis methodologies to be used by the EBA in certain aspects of the Call for Advice. Should this be the case, the EBA should highlight these limitations in its final report.

It is recalled that the analysis provided will not prejudice the Commission's final decision. Moreover, in accordance with the established practices of the Commission Expert Group on AML/CFT, the Commission will continue, where appropriate, to consult the experts appointed by the Member States in the preparation of any proposal.

In order to effectively contribute to the Commission's work, within the timeframe allowed, Commission services would need to receive the EBA's advice by 10 September 2020.

(e-signed)

John BERRIGAN

