ACCOUNTANCY EUROPE FEEDBACK ON THE EUROPEAN COMMISSION'S AML PACKAGE

Accountancy Europe welcomes the European Commission's package of legislative proposals to strengthen the EU's anti-money laundering and countering the financing of terrorism (AML/CFT) rules. Harmonization of Anti-Money Laundering (AML) rules and supervision will facilitate a more effective response to the challenges in the fight against money laundering. This will also ensure a level playing field in the AML rules implementation among the member states.

In our feedback, we underline the need to maintain in the EU AML framework: i) the risk-based approach and ii) the principle of proportionality. Risks can differ from country to country but also amongst obliged entities and thus need tailored mitigation measures. In the AML ecosystem, all actors need to collaborate and improve coordination amongst them. However, each actor has a different role to play and different risks to encounter. And for that, we invite the European Commission (EC) to take into consideration those differences in the proposed legislation, especially when it comes to its implementation.

We also refer to a number of differences between the non-financial and financial obliged entities. These differences are linked to their different roles in the market, the ways they operate but also to the risks they encounter. Going ahead, we would like to see AMLA (Anti-Money Laundering Authority) considering these differences in its decisions, while making sure that the respective roles and responsibilities of oversight remain clear and distinct.

It will be key to ensure that the EC proposals are workable and can be implemented effectively. To this end, we refer below (see Annex) to some areas that in our view require clarifications. We would like to emphasise that the profession is welcoming the package, acknowledging its importance to achieve the objectives on AML field. Our comments below aim to facilitate the application of the provisions as smoothly as possible. The accountancy profession remains committed to fighting money laundering and Accountancy Europe remains at your disposal for further discussion on any of the following or other points.

ANNEX

NEW AML REGULATION

It is crucial to keep consistency in the AML implementation across the European Union (EU). For this reason, we welcome the introduction of an AML single rulebook. In parallel, we believe that the new rules need to be fit-for-purpose and in some cases adapted to the respective obliged entities. We refer below to the following provisions that in our view need to be applied with proportionality and following the risk-based approach:

- **Procedures and controls**

Article 2: Definitions and Article 3: Obliged entities

Considering this is the first time the EC introduces an AML regulation, the EC needs to consider that obliged entities are structured in various ways across the Union. For example, in Italy the chartered accountant is a legal-economic professional and therefore does not correspond to either the "tax advisor" or the "accountant". As a useful reference, the EC can consider the Financial Action Task Forces' (FATF) recent guidance on Virtual Asset Service Providers (VASPs) which was focused on the function and services carried out by the professional rather than the label. In the same vein, we would like to highlight the importance of correct and accurate translation so that the legislation corresponds to the extent possible to national specificities as well as different definitions of the professional service providers.

Article 7 para 2: the obliged entities shall put in place independent audit function to test the internal policies, controls and procedures.

Member States do not currently have a consistent approach to the existing requirement for an independent audit function. For example, in Belgium, the independent audit function is carried out within the firm or the network (e.g. by the compliance team within the network). In Romania, certain obliged entities depending on their size, turnover, the number of employees and assets are required to have an external audit. In the Netherlands there are specific criteria set to decide whether an audit is required such as the risk appetite of the entities and others.

We call on the EC to clarify: i) whether this requirement will be subject to the principle of proportionality depending on the size, nature, and risk profile of the business or sole practitioner ii) how the audit function is to be performed. Finally, we recommend that the EC indicates which auditing standards can be used to perform this auditing function. So far, the profession has been using ISRS 4400.

Providing better clarity on these matters will be key to ensuring consistency in performing this audit function.

- **Identification and verification of the customer's identity**

Article 18 para 1 (a): obliged entities shall obtain at least the following information in order to identify the customer and the person acting on their behalf: (a) for a natural person: (i) the forename and surname; (ii) place and date of birth; (iii) nationality or nationalities, […] and the national identification number, (iv) the usual place of residence […] and, where possible, the occupation, profession, or employment status and the tax identification number, where applicable.

We understand the importance of ensuring and verifying the beneficial owner, particularly in the case of legal persons.

Nevertheless, we are also concerned that this requirement will undermine the risk-based approach by encouraging a "tick box" approach rather than focusing on understanding the risks posed by the client. We would like to reiterate that the Financial Action Task Force (FATF) has stressed several times that AML measures should be carried out on a risk-based approach. This should also include client's identification and verification. If there is low risk that the identity of the client is obscured, there is no need to require all the information article 18 indicates.

Finally, it is key to ensure that obliged entities leverage on technology and digitalization to facilitate easy access to information and avoid duplication or unnecessary administrative burden. The EC can encourage exchange of best practices amongst obliged Entities/ Member States to facilitate this.

Article 18, para 1 (b) […] Obliged entities shall also verify that the legal entity has activities based on accounting documents for the latest financial year or other relevant information

We support the need to provide evidence as part of the identification and verification of the customer's identity and it is indeed crucial to understand the nature of the client's activities. Nevertheless, we would like to suggest broadening the scope of the available documents to others which provide evidence of the business activities- instead of limiting this to accounting documents. In some cases, accounting documents do not exist (e.g. in the case of a newly created entity) or in others accounting documents are not publicly available.

Other sources of verification, subject to a risk assessment, should be included as an option, for example: reliable third-party websites, listing documents, filings, or confirmation from third parties.

- **Performance of compliance tasks**

Article 9, para 1: Obliged entities shall appoint one executive member of their board of directors or, if there is no board, of its equivalent governing body who shall be responsible for the implementation of measures to ensure compliance with this Regulation ('compliance manager'). Where the entity has no governing body, the function should be performed by a member of its senior management.

Article 9, para 3: Obliged entities shall have a compliance officer, to be appointed by the board of directors or governing body, who shall be in charge of the day-to-day operation of the obliged entity's anti-money laundering and countering the financing of terrorism (AML/CFT) policies.

Article 9, para 6: Where the size of the obliged entity justifies it, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.

We welcome the objective to ensure high level accountability and oversight of the AML processes at the board level. In parallel, it is very important to ensure that smaller Designated Non-Financial Business and Professions (DNFBPs) -which in some cases are sole practitioners- do not get unreasonably overburdened. In light of Article 9 paragraph 6, we would like to ask the EC to provide further guidance on how to apply these provisions in line with the principle of proportionality.

*Article 11, recital 27: AML compliance tasks cannot be carried out when there is a **close private or professional relationship** with a customer.*

It is not clear what a 'close private or professional relationship' means and how it would apply in the case of a very small entity or a sole practitioner. Independence of the compliance function is indeed crucial, however, we suggest clarifying whether this requirement will be applied under proportionality, depending on the size of the business, the types of services and the client risk.

Article 13, para 3: AMLA shall develop draft regulatory technical standards […] which shall specify the minimum requirements of group-wide policies, including minimum standards for information sharing

within the group, the role and responsibilities of parent undertakings that are not themselves obliged entities with respect to ensuring ***group-wide compliance with AML/CFT*** *requirements and the conditions under which the provisions of this Article apply to entities that are part of structures which share common* ***ownership, management or compliance control, including networks or partnerships****.*

We note that AMLA is expected to consider proposals extending the definition of groups to networks and partnerships. We would welcome the opportunity to input into these proposals, given our understanding of partnership and network structures in the Designated Non-Financial Business and Professions (DNFBP) sector.

- **Due Diligence procedures and requirements**

Article 17: Where obliged entities either accept or refuse to enter in a business relationship, they shall keep record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents. Documents, data or information held by the obliged entity shall be updated whenever the customer due diligence is reviewed pursuant to Article 21.

Accepting or declining a client should be based on that specific client rather than a general de-risking principle. However, there can be challenges in recording the reasons for such a decision. In several cases, senior management of obliged entities is using its judgement to reject a client that appears as too risky to start business with, depending on their risk appetite.

We are also concerned about how this requirement will apply in practice. Indicatively, we are concerned that such recording can potentially damage the AML framework as it could potentially inform criminals as to which flags have been raised. In addition, obliged entities might have to face retaliatory actions initiated by the excluded clients. We would like to ask the EC to come forward with clarifications of how this requirement will be applied in practice and the potential safeguards the obliged entities will have.

As regards to the subsequent requirement of maintaining updated documents when the periodic due diligence is being performed, we would like to suggest this requirement to be applied proportionally, depending on the validity of the relevant documents and without the obliged entities having to obtain a further copy of every document when such action has no added value on strengthening the AML risk profile.

Article 20: Before entering into a business relationship or performing an occasional transaction, an obliged entity shall obtain at least the following information in order to understand its purpose and intended nature: (a) the purpose of the envisaged account, transaction or business relationship; (b) the estimated amount and economic rationale of the envisaged transactions or activities; (c) the source of funds; (d) the destination of funds.

We would like to note that this article might need additional clarifications on implementation particularly because obliged entities work on the basis of different risk factors depending on their nature of business and services. For example, destination of funds is not always information that is relevant to the services to be provided by the accountancy profession, but it can be critical in a banking transaction.

Article 44: Beneficial ownership information shall be obtained within ***14 calendar days*** *from the creation of legal entities or legal arrangements. It shall be updated promptly, and in any case no later than 14 calendar days following any change of the beneficial owner(s), and* ***on an annual basis****.*

Practical experience has shown that 14 calendar days can be too tight, especially because clients can take longer time to submit their UBO information. If the EC wants to proceed with such a measure, it needs to apply similar timelines to UBO updates.

We would also like to ask the EC to clarify whether the 14 days timeline will commence from the day the change was made or whether the clock starts on the day that the obliged entity is informed or becomes aware of the change. Commonly, the obliged entities are not necessarily informed promptly of beneficial ownership changes.

Finally, the EC should specify what the "annual basis" entails. Since periodic review of due diligence information is based on risk, the review cycle, particularly for low-risk clients often exceed a year.

- **Suspicious Transaction Reporting**

Article 50 - obliged entities shall reply to a request for information by the FIU within 5 days. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.

We understand the importance of retrieving information quickly and under a consistent timeline across Member States. Nevertheless, there are cases in which obliged entities may require additional time to be able to get this information to the FIUs. We suggest maintaining the 5 days response requirement but allowing for potential extensions should the obliged entities be able to justify the reason for delaying.

REGULATION ON ESTABLISHING THE AUTHORITY FOR AML AND CFT

We support the establishment of the new EU AML Authority. It will be instrumental to ensure greater effectiveness and cross-border consistency of AML/CFT requirements application. We welcome the so-called 'hub and spoke' approach to the supervision which we also recommended in our reply to the EC AML Action Plan.

- **Coordination and oversight of national AML/CFT supervisors by AMLA**

One of the key tasks of the new AML authority will be to coordinate and oversee national AML/CFT supervisors, including self-regulatory bodies (SRBs) in certain Member States for certain non-financial obliged entities. As previously raised in our reply to the consultation on the EC AML Action Plan, we would like to stress the significant differences between the financial and non-financial obliged entities. We expect that AMLA will have staff with relevant experience and expertise to consider the differences in the way obliged entities operate and the risks they encounter. In practice, this will entail the need for dedicated expertise in the different areas of the non-financial sector.

6TH AML DIRECTIVE

Article 38: Oversight of self-regulatory bodies

We welcome this expected provision. We stand ready to work together with the EC on this objective as well as the new bodies. We would like to point out that effective supervision needs to be tailored to the activities and services of the non-financial sector entities. In the same spirit, the supervisory body should be familiar with the characteristics and risk profile of those entities so that appropriate supervision will be ensured.

Article 10: Beneficial ownership registers

We would like to strongly encourage free access to the beneficial ownership registers for all the obliged entities across the members states. Most notably, cross border access to beneficial ownership registers is of utmost importance to enhance transparency and effective information sharing.

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