



EUROPEAN COMMISSION
Directorate General Internal Market and Services

CAPITAL AND COMPANIES
Corporate governance, social responsibility

FEEDBACK STATEMENT

SUMMARY OF COMMENTS ON THE

Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC

July 2012

1. OVERVIEW

On 11 April 2012, the Commission adopted the Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter referred to as 'the Report')¹, and invited all interested stakeholders to provide their comments on its considerations.

During the consultation period the Commission received 77 contributions². Contributions were made by public authorities, civil society, business federations and companies in several fields (including financial services, gambling sector, legal professions, real estate sector, trust and company service providers), allowing for a broad representation of various stakeholders. Replies originated in 15 EU Member States and in some countries from outside the EU (e.g. Jersey). 21 of the 77 replies, i.e. 27%, were provided by pan-European organisations.

The overall result of the consultation represents a general confirmation of the issues highlighted in the Commission's Report. Broad support was expressed for the proposed alignment to the revised Financial Action Task Force (FATF) standards and for greater clarification of certain issues, in particular in the area of data protection and cross-border situations. A detailed analysis reveals a diversity of opinions, reflecting the different categories of respondents. The business sectors most directly concerned welcomed this review as an opportunity to improve the effectiveness of the Europe's anti money laundering (AML) and counter terrorist financing (CTF) defences. Non-governmental organisations (NGOs) responded with similar views.

An additional number of comments, position papers and contributions were received outside the consultation. Even though they are not reflected in the figures of this feedback statement, they will also be taken into account in the preparation of the steps ahead.

It should be noted that DG Internal Market and Services received some identical replies. This was fully taken into account in the qualitative assessment of the contributions.

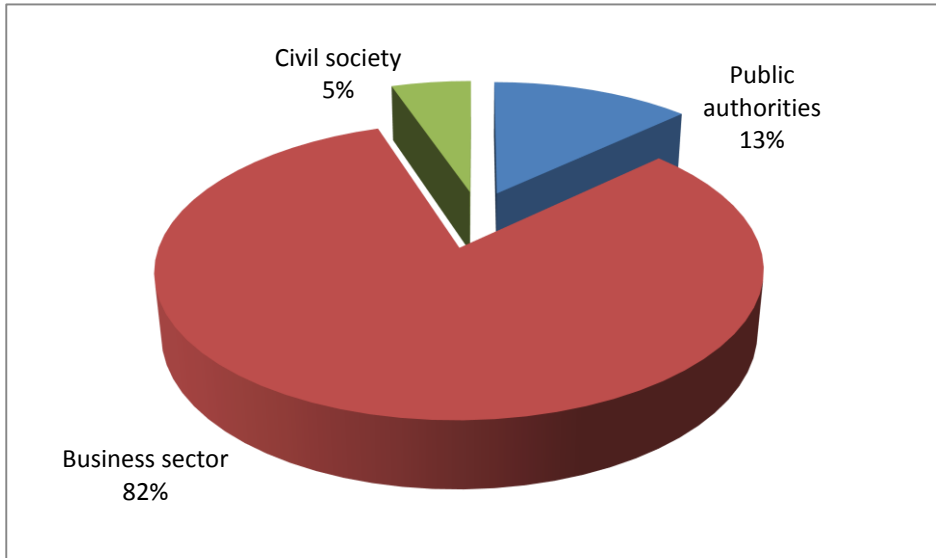
The following page contains three graphs to give a more detailed overview of the replies received by type of respondent, by sector and by country of origin.

¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0168:FIN:EN:PDF>

²Contributions will be available re on the Commission website, unless confidentiality has been specifically requested.

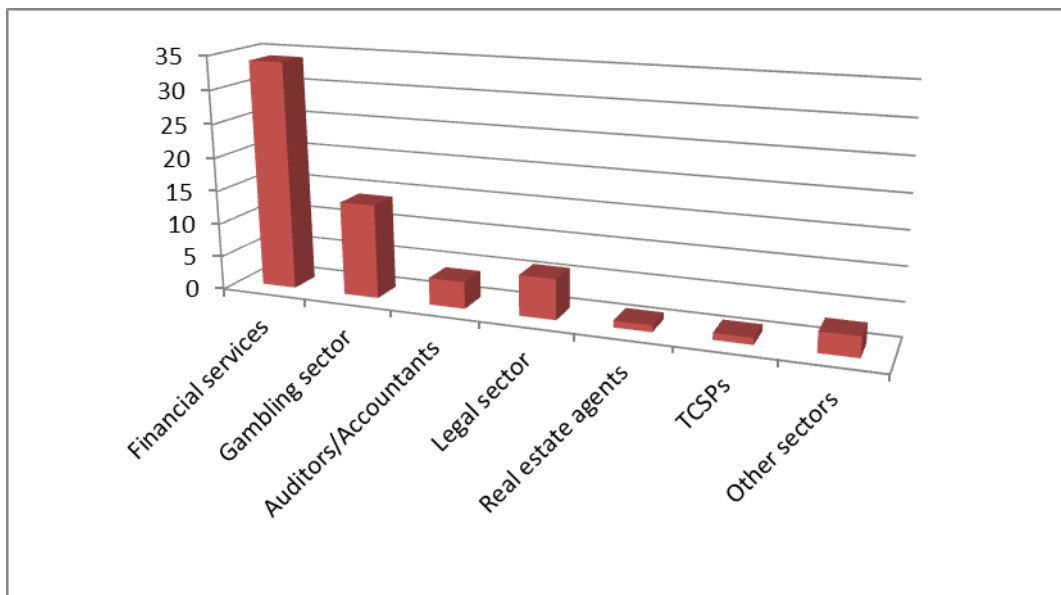
Contributions by type of respondent

Public authorities	10
Business sector	63
Civil society	4
Total contributions	77

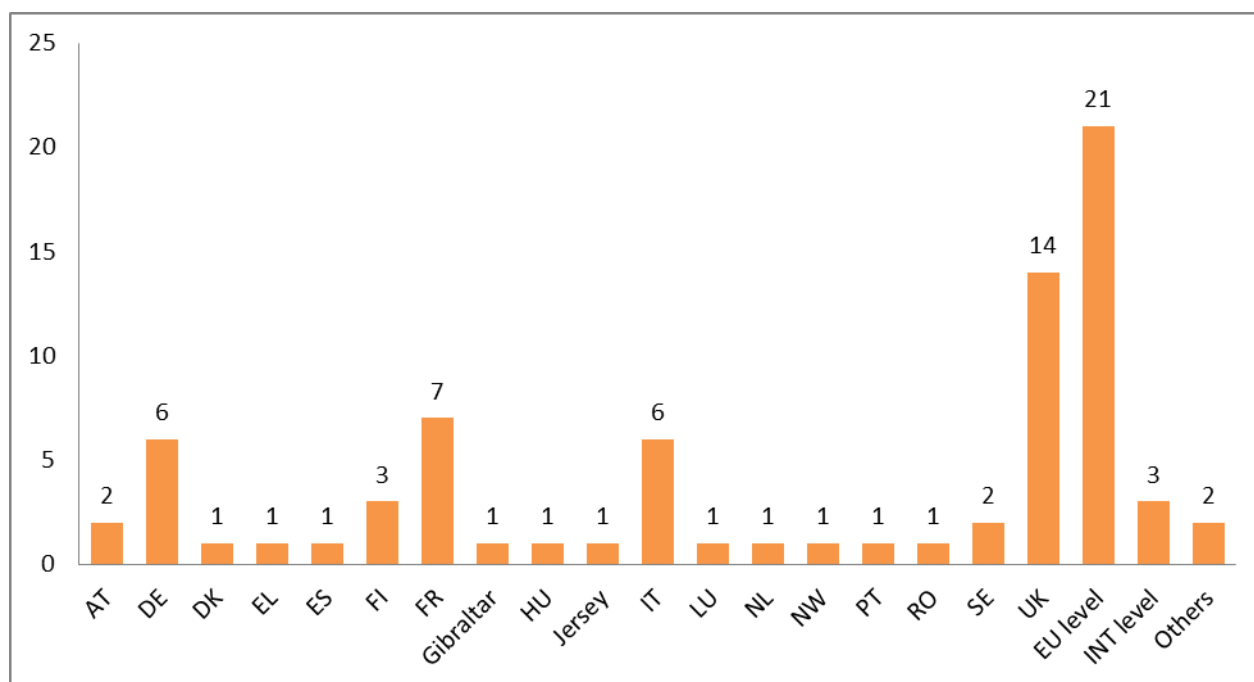


Contributions by sector of business

Financial services	34	54%
Gambling sector	14	22%
Auditors/Accountants	4	6%
Legal sector	6	9%
Real estate agents	1	2%
TCSPs	1	2%
Other sectors	3	5%
Total contributions	63	100%



Contributions by country of origin



DG Internal Market and Services would like to thank the respondents for their contributions.

This feedback statement summarises the overall results of the consultation. It does not provide detailed statistical data but rather seeks to give a qualitative presentation of the contributions received. It cannot be interpreted as providing any indication as to the content, scope or structure of the legislative proposal, that will be put forward this year, to revise Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ('the Directive')³.

³<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005L0060:20110104:EN:PDF>

2. DETAILED ANALYSIS OF RESPONSES

ISSUE 2.1 Applying a risk-based approach (RBA)

The Commission is considering how a broader application of the RBA could be incorporated into the Directive and, in particular, whether there is opportunity for greater harmonisation of Member States' (MS) application of the approach.

There was strong support for the idea of broadening the application of the RBA. All respondents (60% of all replies), including almost all public authorities (70%), more than 57% of companies and business federations and majority of representatives of the civil society said that they would agree with such an approach. The minority which didn't express a specific view on this issue, nevertheless considered the RBA as a key factor to be taken into account in the revision of the Directive (for instance, where considering extending its scope or introducing new requirements as regards customer due diligence). Nobody argued against the opportunity to leave room for MS, supervisors and obliged entities to assess their own risks. Depending on the category of respondents, different views were however expressed as to how this should be applied in practice.

Whereas a great majority of public authorities (85%) were in favour of a complementary supranational assessment of the risk, only a minority of respondents from the business segment (28%) supported such idea, mainly motivated by the worry that diverging practices undertaken by MS, supervisors and the regulated sectors concerned would restrict their ability to operate in cross-border situations. Most of the respondent companies and business federations (53%) rather pointed to the need for a good degree of independence and flexibility in assessing their own money laundering or terrorist financing (ML/TF) risk, which would ensure an evidence-based approach and would allow obliged entities to tailor adequate procedures taking into account the characteristics of the specific sector/products concerned.

A possible role for the Anti-Money Laundering Committee in providing guidance to financial services supervisors on adoption of the risk-based approach was generally envisaged. The point was also made that supervision should focus on less well-resourced entities, rather than on high-risk entities which, very often, are better equipped and have more experience in facing the specific ML/TF risk.

ISSUE 2.2 Criminalisation of money laundering and terrorist financing

The Commission is considering introducing an obligation for MS to criminalise money laundering (ML) and terrorist financing (TF) in a specific instrument based on Art. 83(1) of the Treaty on the Functioning of the European Union.

Less than 15% of the replies received expressed a clear view on this issue. Of these, the majority of respondents were in favour of an explicit criminalisation of ML/TF. Support for criminalisation was particularly strong from business (financial services), mainly motivated by the desire for a harmonised definition of ML/TF as a crime. The need for clarity on such a fundamental point was also mentioned and, to this aim, suggestion was made to expressly include the notion of self-laundering in the obligation for MS to criminalise ML. Some other responses preferred, a change limited to the replacement of “prohibit” with “criminalise” without any further elaboration.

Opposition to the idea comes from some public authorities. The point was made that the current wording of the Directive is sufficient, leaving criminalisation to be done in national criminal legislation in line with FATF Recommendation 3.

One respondent, although in favour of the proposed criminalisation, stressed that such a provision should not be included in the Directive, but in a separate instrument.

ISSUE 2.3 Scope

The Commission is considering extending the scope of the Directive by explicitly including tax crimes as a predicate offence and by broadening the current range of obliged entities.

This was the issue on which the highest number of respondents expressed a clear view (more than 76%). This demonstrates the strong public interest in where EU AML/CFT framework should be headed. The Report invited respondents to comment on several topics. Expressly including tax crimes into the scope of the Directive was the topic on which almost two thirds of contributions were focused (i.e. almost 48% of all replies). The majority of respondents favoured explicit coverage of tax crimes, either because they saw a need for it, or because such inclusion would have no impact on their national legislation (where "all crimes approach" has already been introduced). Only 27% considered the existing provision to be sufficient. They would nevertheless favour explicit coverage of tax crimes on condition that its definition is limited to "serious" tax crimes, possibly by applying a threshold, and that errors for example in completing tax returns, as well as legitimate tax planning activities would not be included. The positive replies came from across all sectors, in particular from almost all public authorities, individuals and non-governmental organisations. Business federations and professionals (mainly from the financial services sector, legal professions and accountants) were divided on this issue. Those favouring the idea underlined the usefulness of a harmonised, clear definition of tax crimes. Those opposed to it felt that such a predicate offence could not be qualified. This points towards precise guidance to be given in order to distinguish between tax avoidance and tax evasion.

Extending the scope of the Directive to all gambling activities which pose higher ML/TF risks was the second topic by number of comments (almost 38%, i.e. almost 30% of all comments). There was strong support for the idea of including and defining gambling, in order to cover both land-based and online gambling activities (including e.g. sports betting, horse racing and lottery games). More than three quarters of contributors stressed the need for a risk-based approach to be applied (which in their view would therefore exclude e.g. arcades, kiosks and gas stations from the scope of the Directive), and different views were expressed as to whether it should be assessed at national or supranational level. Most respondents from the gambling sector also pointed out that such an extension would imply that provisions on customer due diligence and supervision would need to be adapted in light of the specificities of online and land-based gaming activities other than traditional casino.

A little more than 13% of comments focused on including financial and real estate/letting agents into the scope of the Directive. Such extensions were generally supported on condition that financial agents acting under the full responsibility of the financial institution, and informal transactions between individuals would respectively be exempted.

The few comments that mentioned the possible extension of the scope to national central banks, dealers in precious stones and metals and transferring of money or value were mainly supportive, on condition that the extension would be risk targeted.

ISSUE 2.4 Customer due diligence (CDD)

The Commission is considering a range of clarifications to the CDD requirements, as well as a more harmonised approach to customer identification.

A great majority of respondents (over 74%) expressed a clear view on this issue. There was strong support for the idea that a more focussed and risk-targeted approach should apply with respect to enhanced due diligence (EDD) measures, particularly as regards non face-to-face situations (all respondents on this specific point). The majority of respondents (about 60%) were also in favour of clarifying that simplified due diligence (SDD) shall not lead to a full exemption from CDD obligations, and particularly from the requirement to monitor the business relationship on an on-going basis. Support was even higher (74%) as regards the usefulness of establishing guidance on the application of such provisions (e.g. indicating examples or the risk factors to be taken into account when determining if SDD shall apply). Opposition to this idea came from some companies and business federations. The point was made that, in any event, any guidance set out in the Directive should neither be exhaustive nor automatically lead to the assumption of money laundering or terrorist financing. This, in particular because, given the speed of innovation in some sectors (the payment sector, for instance) and the variety of products available, a too rigid regime would contradict the RBA.

The comments on regular CDD measures diverged according to the different categories of respondents. Whereas the public authorities considered it appropriate to reduce the current thresholds in respect of occasional transactions (from the current € 15,000 threshold) and electronic fund transfers (from the current € 1,000 threshold), the business segment (mainly financial services) didn't see a need for it, while the responding representatives of some professions (accountants, lawyers) rather stressed the importance of clarifying the scope of these provisions, and particularly the meaning of "transaction". Support for the idea of harmonising the approach to identification, possibly by compiling a list of EU-wide recognised identity documents came from some companies and business federations. Other companies and the majority of public authorities were, however, sceptical as regards its feasibility and stressed, amongst other things, the need to leave to MS a sufficient degree of flexibility; the need to clarify the terms "identification" and "verification" and the need to clarify the possible data protection implications. Third party reliance was seen by several respondents as having the potential to significantly reduce compliance costs. Clarification of the respective obligations was thus strongly supported. One major issue, severely reducing the practical value of this provision, was identified in the reference to ultimate responsibility remaining with the relying institution (Art. 14 of the Directive). Concerns were also raised with regard to data protection implications.

ISSUE 2.5 Politically Exposed Persons (PEPs)

The Commission is considering clarifying the Directive and ensuring it reflects the changes FATF has made with regards to PEPs requirements.

Over 62% of respondents had a view on this issue. The proposal of extending the Directive to domestic PEPs and PEPs in international organisation received the

unanimous support of the public authorities, representatives of professions (accountants, lawyers) and civil society. Support also came from the business sector which, however, warned about the highly problematic identification of PEPs. This was thought to be due, among other things, by the overly broad definition, indefinitely extended to 'family member' and 'close associate', and by the absence of an authoritative list of PEPs (points raised, for instance, by almost 70% of responding financial institutions and federations). Some respondents also mentioned data protection constraints whereas, from the gambling sector perspective, it was stressed that, having the decision to be made on customers “waiting at the door”, real-time access to reliable data would be essential.

To address these issues, a clearer and narrower definition of PEP, more risk-focused and possibly without obligatory criteria such as residence or time limit, was almost unanimously endorsed. The RBA, in particular, should apply to both domestic and international PEPs, and should allow obliged entities to avoid unnecessary identification. Clarification as to whether EU PEPs should or not be treated as domestic PEPs was also recommended. In addition, the business sector would like the Commission to consider introducing an obligation for MS to list domestic PEPs, as well as PEPs in international organisations and respective positions that would fall under the scope of the Directive. Against this, however, it was thought that an authoritative PEPs list would discourage obliged entities from properly considering the risk, and the requirement to create a centralised database would be an inappropriate solution, for example, for small countries.

ISSUE 2.6 Beneficial ownership

The Commission is considering introducing a range of clarifications, as well as a more harmonised approach with regard to beneficial owner identification and verification.

More than 90% of comments focusing on this issue shared the view that lowering the current 25% ownership threshold would be of no practical significance in combating ML/FT and supported the Commission proposal to leave it unchanged. Support was even higher as regards the usefulness of improving legal certainty across the EU about who the beneficial owner is, while maintaining a risk-based approach to identifying, and verifying the identity of beneficial owners. Several respondents mentioned in particular the need to clarify the meaning of 'control' (direct/indirect ownership). Others expressly supported the idea that, in case of failed determination of the beneficial owner, the identity of a natural person who holds a management position should be determined.. Technical guidance was also generally welcome to ensure a more harmonised implementation.

All respondents favouring greater clarity on beneficial owner identification and verification strongly supported the proposal of including in the Directive measures to promote the transparency of legal ownership information. Their views differed, however, as to the means to achieve it. A majority of those who expressed an opinion stressed the need for an official, timely up to date and reliable source of information, in particular favouring the idea of requiring MS to have a centralised registry of legal ownership. Others suggested that a centralised database should be created at EU level, and made available to all AML/CTF authorities and obliged entities. Some respondents thought that the beneficial ownership should be declared when registering a legal entity, and warned about the possible data protection implications. They suggested that the Directive should derogate from data protection provisions by expressly allowing collecting and maintaining such information.

ISSUE 2.7 Reporting obligations

The Commission is considering introducing clearer rules on reporting obligations, including the requirement for Financial Intelligence Units (FIUs) to provide timely feedback, the requirement that reporting be done to the host country and a more harmonised approach with respect to statistical data to be submitted⁴.

About 44% of respondents expressed a view on this issue. There was strong support for the idea of introducing a legal requirement for FIUs to provide timely feedback, and some respondents also felt that this should not be restricted due to data protection reasons. The main argument supporting this opinion was that feedback on any ML/TF trends would provide useful indicators for obliged entities' own risk assessment, thus allowing them to further strengthen their action against new ML/TF threats. Others stressed that good feedback, possibly through sector-specific methodologies and reporting of arrests, convictions, sentences and confiscation amounts, would permit submitting more accurate and comprehensive information, and thus contribute to ensuring more comprehensive statistics.

Comments on introducing the requirement that reporting should be done to the host country were almost equally divided between those who favoured the idea (all public authorities commenting on this specific topic and some business federations) and those opposed to it. Opposition came from the majority of the business sector, and was mainly based on the justification that reporting to both home and host countries would require additional time and resources (unless it could be undertaken in a single format, in one language and regardless of local compliance obligations), whilst a more effective information sharing between national authorities would have lower costs and could also provide greater opportunities for harmonisation.

In light of this, and of the need to ensure more comprehensive and comparable statistics across the EU, many respondents supported the proposal of providing greater harmonisation of the reporting regime.

Some respondents explicitly mentioned additional or alternative priorities to be examined, for example the protection and the responsibility of the reporting person; the opportunity of considering a coordinate elaboration on a wider range of reporting obligations (not only suspicious transaction reports but also cash transaction reports and other threshold-based disclosures); and the opportunity of concentrating all provisions dealing with the same subject matter (i.e. provisions on FIUs, reporting of suspicious transactions and timely feedback) in one single provision or chapter of the Directive.

ISSUE 2.8 FIUs

The Commission is considering improving co-operation between national FIUs.

Less than 17% of respondents expressed a clear view on this issue. Out of this group there was almost unanimous support for the idea that an effective co-operation and information sharing between FIUs across the EU is important and should be treated as a priority. Several respondents in particular held that the Directive should include the elements which have been discussed and were highly supported in the framework of the FIU platform. This strong support was, however, in some cases associated to the opinion

⁴Comments on introducing an explicit role for self-regulatory bodies in the reporting process (e.g. establishing guidelines) have been analysed under issue 2.11. Self-Regulatory Bodies.

that the Directive should not go beyond the international standards regarding international co-operation by calling for harmonisation. Concern was expressed that further experience of the impact of some new elements should be gained before going further in the harmonisation of powers at EU level.

Only a minority of respondents explicitly favoured the creation of a centralised EU infrastructure. On the grounds of efficiency and effectiveness, in particular with a view to cross-border suspicious activities, it was argued that creating an EU FIU, for example within Europol, would positively impact upon jurisdictional barriers not only in conducting investigations in foreign jurisdictions (i.e. country A investigating a suspicious transaction report regarding a person who is in country B) but also in solving potential conflicts of jurisdictions (e.g. an on-line company licensed in country A identifying a suspicious activity in relation to passing of funds from a customer in country B to a customer in country C). To this end, however, an appropriate legal basis should be considered.

Some respondents raised additional issues that the Directive should consider, for example updating the definition of FIU; the functions of receipt, analysis and dissemination; the features of independence and governance. Others warned about the need that, in case of information sharing between FIUs across the EU, confidentiality of the source of the report is assured (except as ordered by a Court in a competent jurisdiction or by the freely given consent of the reporter).

ISSUE 2.9 Group compliance

<i>The Commission is considering introducing a requirement for financial groups to implement group-wide AML/CFT programmes, including policies and procedures for sharing information.</i>

All respondents on this topic (i.e. almost 37% of all contributions) said that they would agree with requiring financial groups to implement group-wide AML/CFT programmes. A great majority of them (86%), including the responding public authorities and non-governmental organisations, welcomed the idea of expressly permitting intra-group flows of information. In some cases, it was also argued that an obligation, and not a mere possibility, should be introduced. However, almost all respondents called on the Commission to consider the impact of data protection rules on the intra-group sharing of CDD information. Respondents from the financial sector, in addition to data protection constraints, underlined the importance of bank secrecy and questioned, for example, what kind of information may flow, and who could have access to the information within the group. From the legal sector perspective, it was highlighted that the transfer of information within an organisation should not be precluded if it is not a financial group subject to global standards. On the contrary, provided that there is a legitimate interest in the information being shared, appropriate confidentiality provisions in place and the disclosure is not likely to prejudice an investigation, the disclosure should always be permitted.

Defining and allowing a broader scope of application of the concept of 'group' was strongly supported by the business sector. Some respondents proposed a definition based on capital requirements, whereas some others suggested that such a definition should be widened so as to allow financial institutions to benefit from it to the full extent possible. Concern was however expressed that, although extending the definition of 'group' could be suitable as far as information sharing is concerned, it would not be appropriate nor

feasible to enforce a requirement for group-wide AML/CFT policies in a context where there is no common ownership and so ability to enforce detailed national policy.

ISSUE 2.10 Supervision

The Commission is considering providing further clarification in the Directive with regard to supervision in cross-border situations.

All respondents commenting on this topic (22% of all contributions were in favour of clarifying the regulatory powers which home and host AML/CTF supervisors have in cross-border situations. The majority of them, in particular, highlighted the need to consider these with regard to payment and e-money institutions, their agents and, where applicable, their distributors.

Support for recognising the host country's power to directly supervise and, where need be, prosecute breaches of AML/CTF provisions occurring on its territory (including cases of non-compliance with CDD procedures and insufficient suspicious transaction reporting) came from several public authorities. Others, considering that this could be legally and practically difficult in passporting situations, where activities are performed by a third party that is not a licensed entity, suggested that the host authority should at least be involved in the process of accepting the agents in its jurisdiction, by being allowed to reject them. On grounds of effectiveness, some respondents also argued in favour of introducing the power for the host authority to require a local AML compliance officer, while only a minority proposed to extend to agents the regime currently in force for branches.

Although generally in favour of clarifying supervisory authorities' powers in cross-border situations, the business sector found that duplicating regulatory obligations by requiring compliance with local AML provisions would contradict provisions on cooperation between MS. Moreover, with regard to cases where the financial services are provided on a purely cross-border basis, without using any kind of branch, agent or distributor, it would also be in contrast with the provisions of the Treaty of Rome on mutual recognition and freedom to provide services, as well as to the provisions of the E-commerce Directive⁵ which prohibits MS from restricting the freedom of companies established in another MS from offering information society services.

As an alternative, greater co-operation, information sharing and possible delegation of powers between home and host AML/CTF supervisors were envisaged, with a remark that better coordination would make the need for the host country's enforcement powers less urgent.

ISSUE 2.11 Self-Regulatory Bodies

The Commission is considering allowing self-regulatory bodies to provide guidance to their sectors regarding AML compliance and reporting. It has also been proposed that the Directive extends self-regulation to the real estate sector.

⁵Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)

The majority of respondents expressing an opinion on this topic indicated that self-regulatory bodies are a valuable element of an AML/CTF regime and can provide useful guidance or indeed endorse guidance provided by other entities. They therefore considered it appropriate for the real estate sector to assume self-regulatory responsibilities. In their view, in particular, this would not only make it easier to monitor compliance in countries where estate agents are regulated professionals, but would also allow professional bodies to play a more vital role in countries where the estate profession is not regulated.

Some respondents, although in favour of allowing self-regulatory bodies to provide guidance and to supervise in a risk-based way, warned that such role should not extend to giving them responsibility for setting rules, which must remain with the regulators.

On grounds of effectiveness, some respondents also highlighted that there is limited value in using a regulatory body to receive and then send reports to the FIU, as it increases costs and complexity of the system, while introducing the risk of delay and breach of confidentiality in the transmission process⁶.

ISSUE 2.12 Third country equivalence

The Commission is considering whether an equivalence regime is still needed.

Mixed views were expressed as to the usefulness of the listing process and its relevance in the light of the revised FATF Recommendations' focus on a risk-based approach. Whereas the majority of responding public authorities and business federations stressed the usefulness of this exercise and recalled that the list has also legal recognition in some MS, a minority considered the current regime of little benefit. Support for producing a binding list was particularly strong from the business sector while, according to a minority of respondents (including several public authorities), such list should rather be an indicative factor of geographical risk.

As to the procedural aspects (who should prepare, maintain and update the list), it was suggested that the Committee for the Prevention of Money Laundering and Terrorist Financing should be considered as permanent forum for equivalence assessment and listing. Others, however, explicitly favoured a decisional role to be played by the Commission.

Many respondents from the business sector were also in favour of maintaining the possibility for blacklisting. Opposition to this idea, however, came from some public authorities, of the view that any listing of countries should only be in the form of the FATF Public Statement, which could be endorsed, but not added to, at EU level. A common approach to the implementation of the FATF listing process was therefore considered desirable, as far as in line with FATF criteria. Scepticism was however expressed as to its feasibility.

ISSUE 2.13 Administrative sanctions for non-compliance with the Directive

The Commission is considering a greater harmonisation of MS' administrative sanctions regimes by proposing a set of minimum common rules.

⁶Comments on the role of self-regulatory bodies in the legal sector have been analysed under issues 3.1-3.4 Treatment of lawyers and independent legal professionals.

About 25% of respondents expressed a view on this issue. The majority were in favour of greater harmonisation of the sanctioning regime across MS. Support for the idea came, in particular, from the business sector and from several NGOs, of the view that providing more powers and sanctions for AML/CTF purposes would send the right message that is currently lacking, and would carry the added advantage of promoting a level playing field. Positive comments also came from some public authorities, stressing that harmonisation would be an efficient tool for the prevention of regulatory arbitrage. Against a prescriptive regime the principle of subsidiarity was also evoked, and the need for proportionality in respect of the sector, the subject of the infringement and the type/nature of the infringement was recommended.

The minority which considered the current provisions both sufficient and adequate argued that, given the variety of legal systems and traditions on administrative sanctions, greater harmonisation might unduly impact the national regimes. Scepticism was also raised about the added value of imposing common sanctions at EU level before harmonising rules on AML compliance.

ISSUE 2.14 Protection of Personal Data

The Commission is considering introducing clearer rules on the handling of data and greater data protection provisions.

43% of the respondents expressed a clear view on this issue. The fact that national data protection rules hinder an effective intra-group transfer of information was pointed out by several respondents as one of the most important factors generating administrative burden and reducing the effectiveness of AML procedures. The business sector also warned about three further issues. The first is that, under the current data protection regime, there are serious restrictions on disclosure and transfer of personal data to third country public authorities. The second one focuses on difficulties with respect to data retention periods. The third issue raised by the business segment (both financial and non-financial) is that under the proposal for a 'General Data Protection Regulation'⁷ is not clear how widely the "lawful processing" justification will be interpreted. The question in particular was raised whether the mere requirement under the AML provisions would be sufficient to justify the collection/processing of personal data, or a specific legal basis detailing which information may be processed will be necessary.

There was unanimous recognition of the need to address these issues by ensuring effectiveness in monitoring and reporting without infringing data protection requirements. Diverging opinions were however expressed on the right way forward. Support for the idea of introducing more detailed data protection provisions for AML/CTF purposes was particularly strong from business. Suggestion was made, for example, to expressly legitimise data sharing at intra-group level, possibly by making information flows anonymous. Others mentioned the need to expressly legitimise disclosures and transfer of personal data to third country public authorities subject to strict conditions to be defined. Recommendation was also made to require MS to ensure

⁷Proposal for a Regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012) 11 final)

effective co-ordination between AML/CTF and data protection authorities. Others would welcome a provision stating that information relating to suspicious transaction reports should always be exempt from data subject access requests. Some respondents also highlighted the usefulness of greater clarity about what kind of information need to be collected for CDD purposes. Against this opinion, however, it was argued that the Directive should ensure discretion as to the specific type and amount of data collected, in accordance with the risk-based approach.

On grounds of legal certainty, many respondents claimed that aspects already featured in the revised data protection framework (for example the obligation to appoint a data protection officer under certain conditions) should not be repeated.

Some public authorities also indicated that an approach which acknowledges the importance of protecting personal data but allows the flexibility to adopt a risk-based and proportionate AML/CFT regime would produce the best results.

Further co-operation between AML regulators and the data protection supervisors in order to identify potential conflict of interest and to set up a clear and workable regime was generally recommended.

ISSUES 3.1 - 3.4 Treatment of lawyers and independent legal professionals

<i>The Commission is considering providing further clarification in the Directive with regard to the treatment of lawyers and independent legal professionals.</i>

The majority of respondents expressing a view on these issues, including all representatives of the legal sector, considered the revision of the Directive as an opportunity to bring greater clarity to the interaction between AML/CFT legislation and lawyers' obligation to professional secrecy. The legal sector remained concerned, in particular, about the requirement of reporting suspicious transactions for AML/CFT purposes, and indicated that the lower levels of reports, compared to those of other obliged entities, such as the financial institutions, can be due to a variety of reasons, including the different type of relationship and level of transactions and the high ethical standards. The legal sector thus concluded that the exemption from the obligation to promptly inform the FIU should not only be maintained, but should be strengthened. They suggested, for example, that it should cover any advisory communications between lawyer and client. Others indicated that it should apply to any professions that may provide legal advice or representation, and should include administrative, arbitration and mediation proceedings.

Support for the idea that legal professional privilege should not limit the obligation to report suspicious transactions came from several public authorities. These were also in favour of clarifying their role if it appears that the transmission of such reports has been filtered by professional bodies. Strong opposition to this view came, however, from the legal sector, which was of the opinion that the Bars and Law Societies should ensure compliance of the reports received with the requirements of legislation and with their obligation of professional secrecy.

Amongst the few respondents expressing a view on the other issues highlighted in the Report, many favoured the idea of clarifying 'transaction', in some cases associated to the suggestion of extending the scope of the provision (by including, for example, tax and other commercial and business advisory services). With respect to pooled accounts, they thought that SDD should continue to be allowed and, possibly, should be extended to the real estate sector.

Annex: Cross-border Wire Transfer

4 of the 77 contributions received referred expressly to the Annex to the Report. They stressed the desirability of a consultation of interested parties from all countries and territories affected by Regulation 1781/2006 (the Fund Transfers Regulation), and notably by provisions on beneficiary information and national arrangements with respect to third countries.

3. NEXT STEPS

The results of this consultation will help to prepare the legislative proposal that the European Commission will put forward later this year to revise the Directive. This proposal is scheduled for adoption by the European Commission before the end of 2012.