



## EUROPEAN COMMISSION

Directorate General Internal Market and Services

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE  
**Company law, corporate governance and financial crime**

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### **Meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy on 1<sup>st</sup> February 2011.**

#### **1. Overview**

On 1<sup>st</sup> February the Commission services (DG Internal Market and Services) organised a meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy.

The meeting was attended by representatives at EU level of all the professions subjected to AML rules: financial services (banking, insurance, credit, leasing, mortgages, e-money...), real estate agents, lawyers, notaries, trusts and estate practitioners, accountants, auditors, land casinos, online gaming and betting companies. Representatives from SWIFT, American Express and Western Union were also present.

The main objective of the meeting was, in the context of the forthcoming revision of the 3<sup>rd</sup> Anti-Money Laundering Directive (2005/60/EEC), to obtain feedback from private stakeholders on their experience in relation with the implementation of the Directive and the Regulation on Payer Information on a number of specific issues. A further objective was to discuss work and initiatives planned and underway in the area of anti-money laundering and counter terrorist financing – both at EU and international level. The meeting took place in the context of the forthcoming revision of the AMLD.

Participants expressed views on a number of issues: the recent study on the application of the Directive by consultants Deloitte, ongoing work at international level to revise FATF standards, stakeholders' experiences with legislation at EU level (*customer due diligence, beneficial ownership, third party reliance, third country equivalence, Politically Exposed Persons, and the Fund Transfers regulation (1781/2006/EC)*) and sanctions and asset freezing.

In particular, participants highlighted the need to fine-tune EU and international rules and the importance of taking into account sector specificities (e.g. lawyers and accountants). Without challenging the overall beneficial societal purposes of the AMLTF rules, private stakeholders argued that the rules needed to be designed and calibrated according to a risk-based approach, taking into account the costs that they may generate to their industries and, ultimately, to the consumers. There was also a plea for more effort from the public sector (at both national and EU level) to facilitate the application of AML rules, such as the establishment of databases on PEPs, beneficial owners, equivalent third countries, etc.

Participants welcomed the revision process that the Commission intended to follow, which would require prior impact analyses and a good coordination with the FATF's

own standards revision process. They insisted on the importance that the EU speak with one voice at international (FATF) level and expressed satisfaction at the efforts deployed by the Commission in this respect.

The Commission informed participants of its intention to convene the private stakeholders group again at a later stage of the standards revision process.

## 2. Main points arising from the meeting

### On the study by consultants Deloitte on the application of the 3<sup>rd</sup> Anti-Money Laundering Directive

- The Commission summarised the main findings of the study and stressed that it was just one part of the evaluation process, but it would fuel reflections as to future possible changes. There was also a need to reflect changes to FATF standards and align EU with international standards.
- One private stakeholder representative reflected that the Deloitte on-line survey had been very difficult to engage with. Concerns were also expressed that the minimum harmonisation approach in the Directive had resulted in gold plating (often the result of FATF pressure) which introduced difficulties for professionals operating across borders to abide by different standards: damaging for the Internal Market.

### Private stakeholders' application of and experience with the AML Directive and the Regulation on payer information

#### a) Customer Due Diligence (CDD) requirements

- Concerns were expressed about the imbalance between the increasing amount of information being requested by public authorities and **absence of supporting role** to facilitate implementation of rules (e.g. by establishment of consultable registers, etc).
- Banking sector representatives highlighted difficulties to meet **Know-your-customer (KYC) requirements** in cross-border situations: it was in particular difficult to obtain or identify names of beneficial owners, and data protection laws could also complicate KYC and reliance on third parties.
- It was pointed out that the AMLD had originally been conceived only for land based **casinos** where identification could be made face-to-face. It would be appropriated to extend AML requirements also to the on-line betting and gaming industry. Problems were also mentioned with respect to CDD compliance in the case of walk-in customers of casino businesses.
- There were concerns about the extent to which CDD requirements represented a burden on the **legal profession**. It was argued that the AMLD had not been designed for the legal professions. In some countries it was not possible to rely on third parties to conduct CDD, and increasingly contacts were non-face-to-face via e-mail.
- Strong support was expressed for the **risk-based approach**. However on-line CDD was difficult due to the different levels and type of information available on-line and across MS. It was suggested to consider other less conventional ways of gathering information (e.g. information from mobile phone operators, IP

addresses, etc). It was also argued that there was a need for differentiated rules between different types of business.

- It was pointed out by the banking sector that domestic **PEPs** also presented risks. However given low reporting by other sectors, it may be necessary to tailor rules to different sectors. It was also suggested by another stakeholder that a threshold should be introduced for the requirement to file a PEP report.

**b) Beneficial Ownership (BO)**

- One stakeholder complained about the **enormous resources needed** to find the BO – especially in the context of complex cross-border structures. The importance was however recognised of the need to understand for whom one was working. It was pointed out that US legislation did not cover non-financial professionals and that this different implementation of FATF rules could lead to difficulties to obtain information from US clients.
- It was pointed out that the concept of BO was difficult to comply with in the case of **Trusts**.
- It was also pointed out that even in **face-to-face situations** there may be difficulties to prove who the BO is.
- One stakeholder mentioned specific difficulties to identify the BO in the **shipping business**.
- Another stakeholder pointed out that sometimes even the most thorough investigations yielded no clear information about the BO – but that there was always a risk that competitors might not be as thorough.

**c) Suspicious Transaction Reporting**

- Concerns were expressed about the difficulties to organise **reporting to Financial Intelligence Units (FIUs)** which did not recognise the status of Payment Institutions (PIs) – this could effectively prevent cross-border reporting of STRs by a PI to the host country FIU.
- Some Member States were insisting on **systematic reporting** of transactions from some types of entity – it was claimed this could be counterproductive to AML efforts.
- There was some disagreement among stakeholders as to whether the duty to report STRs was to the **home or host country FIU**.
- Some stakeholders called for the **different types of reporting** specified in national legislation (e.g. SARs vs STRs) to be clarified. Consequently there were significant differences between the numbers of reports filed across countries.

**d) 3<sup>rd</sup> Country equivalence**

- Some criticism was expressed of the **EU list of equivalent countries**, which were not deemed to be not credible, and there were calls for a more up to date list which had binding effect.

**e) Fund Transfer Regulation**

- A number of **criticisms** were made with respect to plans to modify the rules on fund transfers (especially in the context of FATF Special Recommendation VII). It was pointed out that awareness was needed that there might be risks of reporting too much information and sending it around the world – in particular the risk that such information might end up in the wrong hands.
- Several stakeholders pointed to the **complexities of verifying the accuracy** of information in the incoming SWIFT message.
- The fact that **Switzerland** was a member of SEPA but outside the EU/EEA would result in impractical requirements that all information would need to be requested.
- One stakeholder complained that while the notion of "**cross-border**" was fast disappearing, the requirements on fund transfers were becoming increasingly onerous. There was a call for feedback on how many cases of terrorist financing had been detected as a result of providing such additional information.
- Another stakeholder pointed out that while **filtering of information** was expected to take place in real time, the reality was that it took time to perform checks.

#### d) **Costs of compliance**

- The Commission asked stakeholders to provide evidence about the costs of compliance with AML rules.
- One stakeholder responded that they had calculated the **costs of screening transactions to be in excess of 400 million \$** (4.5 billion messages). However 99% of alerts were "false positives".
- Another stakeholder argued that while it was accepted that compliance must come at a cost, it was also **necessary to ensure that money should not be wasted**. It would therefore be important to quantify the costs of new measures before new rules were published. It was also argued that as all costs would ultimately be passed on to customers, it was important to understand how much value was being created.
- One stakeholder pointed out that unduly harsh AML rules **risked pushing payments business towards the unofficial sector**.
- Concerns were also expressed that there appeared to be an **increasing reliance on industry** to do the work of authorities (police, etc.)

#### **Work at FATF level**

- The Commission outlined the ongoing work at the FATF to revise international standards.
- Stakeholders expressed **some concerns** that despite the public nature of the consultation, there were frustrations that decisions had already been taken beforehand. Concern was also expressed about the FATF tendency to disregard EU legislation when evaluating MS laws.
- Concerns were also expressed about the idea of including **tax crimes as a "predicate offence"**. This risked over-complexity, and it was not at this stage clear what type of crimes might be included.

#### **Sanctions and Freezing of assets**

- The Commission informed private stakeholders about the situation as regards (Iran, etc) and the recent ECJ KADI case law.
- Stakeholders sought clarifications about various aspects of the sanctions regime (clarification about Art 25 of the Iran regulation, dual use situation), and pointed to difficulties to receive confirmation of names on lists, to identify names on screen, as well as to use the website.