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INSTITUTE OF
INTERNATIONAL
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March 10, 2020

Mr. Valdis Dombrovskis
Executive Vice-President and Commissioner, Financial Stability, Financial Services and
Capital Markets Union
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

RE: Policy Communication: Towards a new comprehensive approach to preventing and combatting money laundering and terrorist financing

Dear Mr. Dombrovskis:

The Institute of International Finance (the “IIF” or the “Institute”) would like to take this opportunity to offer its feedback regarding the Policy Communication by the European Commission (the “Commission”) on the European Union’s (“EU” or the “Union”) approach to combating money laundering and countering the financing of terrorism (the “Communication”).¹ We greatly appreciate the work of the Commission in offering a roadmap for consultation on areas it intends to address in new proposals.

In October 2019, we stressed in a letter to the Commission and other EU bodies the urgent need to ensure that all relevant authorities effectively and consistently address the risks arising from money-laundering and terrorist financing and cooperate to share information that will help safeguard international finance against illicit use.² A more coordinated framework in the EU for implementation and oversight of measures used in combating threats to the integrity of the financial system is imperative.

We attach that letter for ease of reference; however, we would like to take this opportunity to briefly highlight again the key areas we believe should be addressed in future policy initiatives:

1. Greater consistency in anti-money laundering and countering the financing of terrorism (“AML/CFT”) requirements across member states and through the Financial Action Task Force (“FATF”):

Transformation of the EU Anti-Money Laundering Directives into a binding pan-EU regulatory requirement would help promote a harmonized, directly applicable Union-wide anti-money laundering framework with common standards on sanctions for breach of the law. Regulators, supervisors, and law enforcement authorities could trust the fact that the rules and penalties for non-compliance are congruous. This would

¹ European Commission, *Policy Communication: Towards a new comprehensive approach to preventing and combatting money laundering and terrorist financing*, February 2020.

² IIF, *RE: Communication from the Commission to the European Parliament and the Council towards better implementation of the European Union’s anti-money laundering and countering the financing of terrorism framework*, October 2019. (Attached to this submission).

eliminate one of the incentives criminals have to channel their operations through jurisdictions they know are less resilient than others.

The EU should also lead the way in the work of the FATF in addressing these issues globally and ensuring FATF standards and guidance are made directly applicable in EU law to avoid gaps in interpretation and consistency.

2. The adoption of improvements to the EU legal framework addressing domestic and cross-border information sharing, the promotion of domestic and cross-border public/private partnerships, Suspicious Activity Reporting (“SAR”) reform and beneficial ownership information reporting reform:

Whilst adoption of coherent regulatory standards across the EU is important, the Commission should, at the same time, also address gaps in the current AML/CFT framework:

- a. *Improve financial crime information sharing:* Where it is not already explicitly allowed, any updates to the framework via a regulatory requirement should adopt provisions which allow for the sharing of critical financial crime data – including SARs and associated underlying information – across borders enterprise-wide, between entities in different group enterprises, between enterprises and governments, and between governments – in both directions. This should also address issues whereby such information can be adequately shared outside the Union and vice versa, when relevant.

The balance between data privacy/data protection and the sharing of financial crime information is also essential. The Commission should examine ways to provide legal certainty on the sharing of financial crime related data in connection with applicable privacy laws and should mandate the formal cooperation between data privacy authorities and AML/CFT authorities to ensure the compatibility of AML/CFT requirements with data protection and privacy rules and other similar provisions (e.g. data security / localization) as mandated under FATF Recommendation 2.

- b. *Establish and enhance public/private partnerships:* The Commission should promote a more effective financial crime risk management regime by proactively supporting the creation of domestic/multilateral public-private partnerships. This should be done through public sector review of legal/regulatory barriers to information sharing (as noted above) and enacting enhanced, measurable and enforceable guidance on information exchange for national Financial Intelligence Units (“FIU”), banks and law enforcement that will improve the exchange of *both* strategic (typologies and geographic indicators, for example) and tactical (underlying case data) information. Coordination with countries outside the Union should also be prioritized in this area.

The Europol Financial Intelligence Public Private Partnership (“EFIPPP”), for instance, is an important example of cooperation between 13 countries and 24 international institutions (with those numbers continually expanding). The Commission should look towards policy proposals which support the work of the EFIPPP by enabling greater tactical level exchange of data across its membership and allowing further connectivity between EFIPPP and domestic public/private partnerships across the EU and around the world.

- c. *Enact SARs reform and improve beneficial ownership information exchange:* The Commission should consider binding requirements on member states to enhance the “feedback loop” between FIUs, law enforcement and the private sector. This should entail a fundamental review of SARs regimes in the EU, streamlining requirements and providing for the identification of SARs good practice to help identify the right cases on which both law enforcement and the private sector should focus the most attention.

The Commission should also propose ways to ensure access to updated and accurate beneficial ownership information is available to both the public and private sectors. Regular review should be conducted at EU level to ensure weak spots in beneficial ownership registries are mitigated, including the use of false documentation or inaccurate identities to hide beneficial ownership interests. It should also be made clear that it is not the responsibility of financial institutions to verify the accuracy of government information against their own client data. There should be further work to examine the EU's role in international cooperation with third countries to identify where complex corporate structures registered outside the Union may be shielding criminal activity.

3. Enhancements to the use and adoption of technology in fighting illicit finance:

New technologies have dramatically bolstered financial institutions' AML efforts and also hold promise for effective deployment at FIUs. Further work and leadership at the EU level to foster new technologies and review regulatory impediments to innovation will greatly assist efforts to fight financial crime. The EU, through a review of its AML/CFT architecture, should encourage the process for innovation in financial regulatory technology that assists in compliance with AML/CFT regulations and enhances effectiveness in overall financial crime risk management.

The IIF values working with you on these important issues, both in the EU context and internationally through the FATF. We look forward to the Commission's full policy proposals in this area in order to build upon our response herein.

If you have any questions, please contact Matthew Ekberg at mekberg@iif.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Portilla', with a large, stylized initial 'A' and 'P'.

Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance

Timothy D. Adams
President and CEO

October 3, 2019

The Honorable Mika Lintilä
Minister of Finance
Ministry of Finance – Finland

Mr. Valdis Dombrovskis
Vice President and Commissioner
Financial Stability
Financial Services and Capital Markets Union
European Commission

Ms. Věra Jourová
Commissioner, Justice, Consumers and Gender Equality
European Commission

Mr. José Manuel Campa
Chairman
European Banking Authority

Mr. Andrea Enria
Chair of the Supervisory Board
European Central Bank

Via Email

Ladies and Gentlemen:

RE: Communication from the Commission to the European Parliament and the Council towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework

The Institute of International Finance (the "IIF" or the "Institute") would like to take this opportunity to offer its feedback regarding the Communication by the European Commission (the "Commission") on better implementation of the European Union's ("EU" or the "Union") anti-money laundering and countering the financing of terrorism framework (the "Communication").¹ The Communication takes into account the report of the Commission on its assessment of recent alleged money laundering cases involving EU credit institutions², the Commission's report on the framework for Financial Intelligence Unit ("FIU") cooperation³ and the Commission's assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.⁴ The Communication and these

¹ European Commission, *Communication: Towards a better implementation of the EU's anti-money laundering and countering the financing of terrorism framework*, July 2019.

² European Commission, *Report on the assessment of recent alleged money laundering cases involving EU credit institutions*, July 2019.

³ European Commission, *Financial Intelligence Unit report*, July 2019.

⁴ European Commission, *Supranational Risk Assessment report*, July 2019.



ancillary reports point to several key areas where strengthening the Union's infrastructure to fight financial crime would lead to better outcomes in the EU and around the world.

As we stressed in a letter in October 2018⁵, there is an urgent need to ensure that all relevant authorities effectively and consistently address the risks arising from money laundering and terrorist financing and cooperate to share information that will help safeguard international finance against illicit use. A more coordinated framework in the EU for implementation and oversight of measures used in combating threats to the integrity of the financial system is imperative.

We believe now is the time for concerted action to improve the cross-border Anti-Money Laundering and Countering the Financing of Terrorism ("AML" and "CFT") regime and we respectfully request the Commission, the European Parliament (the "Parliament") and the Council of the European Union (the "Council") (and collectively, the "EU Institutions") consider several important issues as they work to address the points raised in relation to the Communication.

Specifically, we believe the EU AML/CFT policy architecture would benefit from reform in the following key areas: 1. greater consistency in AML/CFT requirements across member states and through the Financial Action Task Force ("FATF"); 2. the adoption of improvements to the EU legal framework addressing domestic and cross-border information sharing, the promotion of domestic and cross-border public/private partnerships, Suspicious Activity Reporting ("SAR") reform and beneficial ownership information reporting reform; and 3. enhancements to the use and adoption of technology in fighting illicit finance.

The IIF looks forward to working with you on these important issues, both in the EU context and internationally through the FATF. International coordination on these issues starts at the FATF and we welcome a proactive role being taken by Europe in ensuring consistency at the global level as well as at EU level.

If you have any questions, please contact Matthew Ekberg at mekberg@iif.com.

Very truly yours,



Timothy D. Adams

⁵ IIF, *RE: Commission proposal to strengthen the Union framework for prudential and anti-money laundering supervision for financial institutions*, October 2018.

Issues for consideration on strengthening the EU framework AML/CFT compliance

The real and present threat of criminal incursion into legitimate financial intermediation needs to be dealt with on a consistent, international basis. Though this global fight against financial crime is of paramount importance, the current AML/CFT framework is not as effective as it should or could be. The amount of money laundered globally each year is estimated at 2% to 5% of global GDP, or between EUR 715 billion and 1.87 trillion.⁶ Less than 1% of illicit financial flows are intercepted in the EU alone.⁷ This cross-border criminal finance supports some of the worst problems confronting society today; including money laundering, terrorism, sexual exploitation, modern slavery, wildlife poaching and drug smuggling. The sheer size of the issue poses a risk to global financial stability.

While we fully recognize that the private sector has a vital role to play in enhancing financial institutions' ("FI") internal capacity to detect financial crime and adhere to the highest standards, the Commission's Communication⁸ points to significant gaps in effectiveness of the EU AML/CFT regime that would benefit from change. As the EU Institutions weigh the Commission's findings, we believe careful consideration of the following issues would enhance the efficacy of the system.

1. Improve consistency in the adoption and enforcement of AML/CFT standards across the EU and through the FATF

Current rules for AML and CFT are mostly based on a common set of FATF standards, but their implementation differs greatly across jurisdictions, even when they are based on a common, binding regulatory framework such as the EU Directives on AML.⁹ This results in ambiguities and regulatory fragmentation between jurisdictions that make it difficult for financial institutions to operate in more than one country while applying consistent standards and adequately navigating the frameworks.

As noted in the Communication, minimum harmonization of rules at EU level coupled with the lack of integration of AML/CFT concerns in prudential supervision – especially in cross-border situations – has led to gaps in the oversight and enforcement regime. We agree that further harmonizing the AML/CFT rulebook – both in terms of the obligations of credit institutions and the powers, duties and tools given to supervisors – is important and would have a highly beneficial impact on the mitigation of economic criminal activity. As such, transformation of the EU Anti-Money Laundering Directives into a binding pan-EU regulatory requirement would help promote a harmonized, directly applicable Union-wide anti-money laundering framework with

⁶ United Nations Office on Drugs and Crime ("UNDOC"): <https://www.unodc.org/unodc/en/money-laundering/globalization.html>.

⁷ Europol, *Financial Intelligence Group Report, From Suspicion to Action – Converting financial intelligence into greater operational impact*, September 2017.

⁸ European Commission, *Communication: Towards a better implementation of the EU's anti-money laundering and countering the financing of terrorism framework*, July 2019.

⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May, 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

common standards on sanctions for breach of the law.¹⁰ Regulators, supervisors, and law enforcement authorities could trust the fact that the rules and penalties for non-compliance are congruous. This would eliminate one of the incentives criminals have to channel their operations through jurisdictions they know are less resilient than others.

At the same time, work must be done to address gaps in the current regime. The EU should look to address the issues outlined in section two of this letter concerning information sharing, public private partnerships, beneficial ownership transparency and SARs reform. The EU should also lead the way in the work of the FATF in addressing these issues globally and ensuring FATF standards and guidance are made directly applicable in EU law to avoid gaps in interpretation and consistency.¹¹

Lastly, the Commission has highlighted significant structural issues in the oversight of EU rules for AML/CFT. We agree in particular with its assessment that in an integrated internal market, failures in the application of the legal framework pose threats to the integrity of the Union's financial system and the Union's security more generally. Specifically, the Communication points out that regulatory and supervisory fragmentation impinges upon the effectiveness of cooperation among various actors concerned with the prevention of economic crime.

The IIF believes that as the EU Institutions reflect on next steps in relation to the findings of the Communication, consideration should be given to certain principles on more effective coordination and oversight of Union AML/CFT rules. These principles should encompass greater consistency in hierarchical powers for oversight/enforcement and greater coordination between member state regulatory and supervisory bodies and FIUs, along with a review of their coordination with their third country counterparts.¹² A review should also be undertaken as to the oversight of non-bank actors in relation to financial crime to avoid gaps in enforcement.

2. Address gaps in the EU AML/CFT rulebook

Whilst adoption of coherent regulatory standards across the EU is important, the EU Institutions should, at the same time, also address gaps in the current AML/CFT framework, many of which were identified in the Commission's Communication and ancillary reports:

a. Improve Information Sharing

The proper management of risk in AML/CFT efforts can be improved by better information sharing, both domestically and internationally. Such an exchange is important for well-

¹⁰ We note that in the Commission's report on its assessment of recent money laundering cases involving EU credit institutions (European Commission, *Report on the assessment of recent alleged money laundering cases involving EU credit institutions*, July 2019), the lack of effective, proportionate and dissuasive sanctioning powers was recognized as a flaw in the EU-wide framework. Such issues would be more effectively addressed via a regulatory requirement. In the absence of such, more coordinated interpretive guidance by the Commission should be considered.

¹¹ We note that the FATF and the BCBS have taken steps to provide additional guidance on some problems facing the global system, but international guidance on established recommendations or principles can only go so far in providing the regulatory certainty needed by both banks and national authorities. Still, it must be applied in good faith across jurisdictions in order for it to be fully useful. Guidance is generally non-binding and can sometimes even be invalid due to contradictory rules in effect in certain jurisdictions. It will be incumbent on national authorities to clarify regulatory expectations as to its ultimate effect. This can lead to disparate interpretations, which could ultimately harm the efficacy of solutions to the issues being addressed. A means of ensuring FATF and BCBS Guidance is adopted in a fulsome and transparent fashion across the EU is ultimately needed, otherwise there is a real risk the status quo will be maintained.

¹² The Commission also cites the need for appropriate resources for supervisors and FIUs. However, it notes that in some cases, member state supervisors are critically understaffed (European Commission, *Supranational Risk Assessment report*, July 2019, p. 15). Updates to the framework should take into account how resources are allocated for supervisory bodies and how adequate staffing is assessed (including the consideration of private sector secondments to the relevant authorities to increase common understanding between both the public and private sectors). Further resources for Europol – an organization which plays a critical international role in stopping illicit activity – should also be considered.

functioning AML and CFT policies which fulfill the goal of protecting global finance from criminal incursion. Without adequate insights by banks, law enforcement, and intelligence agencies into the funding of these activities, efforts to stop criminals, terrorists, and rogue states from inflicting further damage globally will be increasingly inhibited in light of the growing sophistication of criminal schemes.

The Communication and ancillary reports recognize the importance of information sharing and highlight areas where the current regime could be improved. Specifically, the Commission notes that several member state authorities considered that confidentiality requirements prevent efficient cooperation and information exchange between FIUs, law enforcement, prudential and AML/CFT supervisors.¹³ Cooperation between the Union and third country authorities was also considered challenging, with the Commission citing concern that the transfer of data in certain cases may be in violation of the General Data Protection Regulation (“GDPR”).¹⁴

More broadly, inconsistent legal frameworks – and/or the interpretation of those frameworks – for data protection, management of SAR-type information, privacy and bank secrecy can prevent the sharing of relevant information across borders between financial institution branches, between financial institutions and governments and between separate financial institutions, for the purpose of managing financial crime risk.

To overcome this, any reorganization of the AML/CFT oversight in Europe should address challenges to operative sharing of AML/CFT information. Where this is currently allowable under AMLD IV and V, adoption should be clear and uniform across the EU.¹⁵ Where it is not explicit, any updates to the framework via a regulatory requirement should adopt provisions which allow for the sharing of critical financial crime data – including SARs and associated underlying information – across borders enterprise-wide, between entities in different group enterprises, between enterprises and governments, and between governments – in both directions. This should also address issues whereby such information can be adequately shared outside the Union and vice versa, when relevant.¹⁶

¹³ European Commission, *Report on the assessment of recent alleged money laundering cases involving EU credit institutions*, July 2019, p. 14.

¹⁴ *IBID*, p. 15, 16.

¹⁵ Art. 45 para 8 of Directive (EU) 849/2015 states that Member States shall ensure that the sharing of information within the group is allowed. Information on suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to the FIU shall be shared within the group, unless otherwise instructed by the FIU. Art. 45 para 1 of Directive (EU) 849/2015 states that Member States shall require obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies as well as policies and procedures for sharing information within the group for AML/CFT purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.

We also note that AMLDV enhanced the exchange of information between the relevant competent authorities, notably by removing the confidentiality obstacle to the exchange of information between supervisors and through the conclusion of a memorandum of understanding for exchanges between the supervisors and the European Central Bank.

¹⁶ We note that AMLDV enables Member State supervisory authorities to conclude memoranda of understanding with third country counterparts for purposes of collaborating and exchanging confidential information.

We note that work on this topic has been addressed to an extent by the FATF¹⁷ and by the European Supervisory Authorities (“ESA”)¹⁸. These are important steps forward, however, a *comprehensive* framework for information sharing must be tackled at the Union level and coordinated internationally.

b. Develop and Enhance Public/Private Partnerships

At the center of an intelligence-led financial crime model is the public-private partnership (PPP) – a collaboration between financial institutions, law enforcement and the regulatory community. Not only are PPPs an important first step in the ability to deliver operational benefits and efficiency gains, but they can also provide a framework to build the relationships and dialogue between stakeholders to help coordinate and catalyze coherent reform of the wider AML/CFT system.

The creation of the United Kingdom Joint Money Laundering Intelligence Taskforce (“JMLIT”), for example, provides an important opportunity to address the information asymmetry which currently exists between law enforcement and the private sector and for information to be shared openly in the spirit of working together to identify criminals and seize criminal assets. Similar initiatives are underway or beginning in other jurisdictions. For instance, the IIF has partnered with Europol in the creation of the Europol Financial Intelligence Public Private Partnership (“EFIPPP”), the first cross-border financial intelligence sharing partnership. These are all vital steps towards an environment in which financial criminals are unable to use the financial services sector to launder the proceeds of crime or provide terrorist funding.

The Commission discusses at length the role of FIUs across the Union and cooperation on financial intelligence led approaches in AML/CFT. It highlights significant inadequacies in the current regime. For example, its supranational risk assessment found insufficient information sharing between the public and private sectors and improved mechanisms for feedback from FIUs to obliged entities should be found.¹⁹ As discussed below, SARs reform should be considered as means to address this inadequacy, however, the creation of formal PPPs nationally and multilaterally across the Union should be considered as an important step in tackling gaps in the framework.

The EU Institutions should consider where they can promote the furtherance of cooperation by proactively supporting the creation of domestic/multilateral public-private partnerships. This should be through public sector review of legal/regulatory barriers to information sharing (as noted above) and by review of the utility of public/private partnerships through enhanced, measurable and enforceable guidance on information exchange for national FIUs, banks, and law enforcement that will improve the exchange of *both* strategic (typologies and geographic indicators, for example) and tactical (underlying case data) information. Coordination with countries outside the Union should also be prioritized in this area.

¹⁷ The FATF has recently undertaken significant work in this area by offering both Guidance and updates to the FATF Recommendations (the “Recommendations”). Importantly, it adopted revisions to Recommendation 2 on national cooperation and coordination to expand the Recommendation to include information sharing between competent authorities and emphasized that cooperation should include coordination with the relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy (“DPP”) secrecy rules and other similar provisions (e.g. data security / localization). Ensuring this cooperation happens should form a central part of any new EU structure for AML/CFT.

¹⁸ New draft guidelines for supervisory colleges on **cooperation and information exchange between competent authorities supervising credit and financial institutions for the purposes of AML/CFT, along with agreement on greater information sharing between the ECB and competent EU authorities, will also assist in better information exchange. However, the wider role of information sharing enterprise-wide, enterprise-to-enterprise and enterprise-to-government in both directions must be considered.**

¹⁹ European Commission, *Supranational Risk Assessment report*, July 2019, p. 8.

c. Reform the SARs Regime

We believe there is an inherent responsibility for the public sector to develop better lines of communication with the private sector, whereby the private sector receives regular feedback on information shared via FIUs and related law enforcement bodies, alleviating ambiguity in regard to objectives and processes that will help enhance the effectiveness of outcomes for both sides.

As recognized by the Commission, there is currently too much of a one-way-street between financial institutions and FIUs. After SARs are filed, there is generally no feedback by the FIU or other government entity. While we are cognizant of the sensitivities around investigations of potential money laundering cases by the FIU and the risk of potential tipping-off, if a FIU more proactively and specifically highlights which typologies of ML/TF issues it prioritizes within a given time-span, the industry will be able to focus its efforts on filing more meaningful SARs. In turn, investigative time for the financial institution and FIU could be rededicated to high priority cases.

The Commission discusses the efforts that should be considered to improve cooperation and the flow of information. For example, it maintains recommendations from the 2017 supranational risk assessment that calls for, *inter alia*, FIUs to provide guidance to obliged entities on risks, customer due diligence and reporting requirements. It also calls for special and ongoing training of obliged entities on risk and feedback on the quality of reporting and typologies.²⁰

These recommendations are helpful, but should be coupled with binding requirements on member states to enhance the “feedback loop” between FIUs, law enforcement and the private sector. This should entail a fundamental review of SARs regimes in the EU, streamlining requirements and providing for the identification of SARs good practice to help identify the right cases on which both law enforcement and the private sector should focus most attention.²¹

d. Improve Beneficial Ownership Transparency Regimes

Identifying the true beneficial owner or individual exercising control in a business relationship is critical for both the public and the private sector in the fight against international financial crime and access to reliable, verified, and accessible beneficial ownership information remains a priority. Where a robust platform for accessing information on underlying control of linked entities does not exist or is impaired by laws and regulations which cause silos in information exchange, systemic weakness can be created on a global basis. A lack of knowledge regarding beneficial ownership allows criminals, money launderers, and terrorist financiers to obscure their identities from law enforcement. Without access to such information to assist them with their investigations in a consistent, cross-border way, a critical gap exists in the current AML/CFT regime.

As the Commission notes, AMLD IV provided an obligation for Member States to set up beneficial ownership registers for companies, trusts and similar legal arrangements and AMLD V changed the composition of these registers to include enhanced access and improved interconnectedness between the national central beneficial ownership registers. Though most member states have put in place a central register or database to collect beneficial ownership information, it is acknowledged that major vulnerabilities remain. This includes the possibility that national registers on beneficial ownership might have relative weak spots with regard to

²⁰ IBID, p. 17.

²¹ In October 2019, the IIF and Deloitte LLP will be releasing a new paper on the global framework for fighting financial crime, with further recommendations on SARs reform at an international and domestic level.

their technical implementation or management. Criminals might shift their business to member states with a less effective framework to exploit these differences.²²

This gets to the heart of the need for greater cohesion in AML/CFT across the Union and we believe that the EU Institutions have an opportunity to enhance the effectiveness of these registers by creating binding regulatory requirements on the adoption of EU-wide standards for compliance. This would include a regular review at EU level to ensure weak spots are mitigated, including the use of false documentation or inaccurate identities to hide beneficial ownership interests. There should be further work to examine the EU's role in international cooperation with third countries to identify where complex corporate structures registered outside the Union may be shielding criminal activity.

Options should also be explored to further the effective use of these registries, including consequences if this information is not available or up-to-date. The use of new technologies in supporting real-time updates should be examined. Financial institutions should also be able to fully rely on the information in the registries when conducting their due diligence. This should form part of a comprehensive review of member state compliance with EU-wide standards ensuring each jurisdiction fulfills the requirements for identification of beneficial ownership.

In addition, the use of the Legal Entity Identifier ("LEI") should be considered to enhance methods and tools for transparency. Incorporating further use of LEI into registries as a required field and encouraging its use would add additional benefit in securing further reliable information on overall control and enhance customer due diligence generally.

3. Enhance the use of innovation across the EU to improve AML/CFT efforts

New technologies have dramatically bolstered financial institution's AML efforts and also hold promise for effective deployment at FIUs. Machine learning and artificial intelligence technologies have the potential for self-learning and analyzing large amounts of complex data and are improving monitoring and analysis of suspicious activity on FIs' client accounts and payment systems. For instance, "false positives" generated by monitoring systems have begun to decrease with this technology, while they also detect more complex laundering patterns.²³ Querying by a financial institution of the confidential/encrypted data of another financial institution using homomorphic encryption and/or zero-knowledge proof technologies, for example, could enable financial institutions to verify certain types of information with each other, without compromising the security or confidentiality of the underlying data.

In addition, the use of digital identification can contribute to a more inclusive financial system, which is also more resilient in terms of preventing financial crime. Leveraging this technology to strengthen the system can only be encouraged. While they will not be a "silver bullet" to solve

²² IBID, p. 7.

²³ In 2018, the IIF surveyed a diverse group of banks and insurers on their adoption or exploration of machine learning and artificial intelligence for AML purposes. This study taps into regulators' interest in understanding the types of new techniques being pursued to improve AML detection and compliance as well as enabling these new developments to be shared and better understood across the industry. This is especially pertinent where firms are able to highlight the barriers or challenges encountered with these technologies and the supporting infrastructure as well as data feeds and operational experiences in implementation. The survey phase was completed in June 2018 with 59 institutions (54 banks and 5 insurers) participating. These 59 firms represent a broad spectrum of geographies (all continents), a reasonably even distribution of firms from those with assets greater than \$ 1 trillion to those below \$ 150 billion. The results emphasize many of the issues raised herein regarding the need for regulatory consistency and enhanced information sharing to improve technological efficiency in the system. Full results can be found here: <https://www.iif.com/publication/regulatory-report/machine-learning-anti-money-laundering>.

all issues in connection with retail business relationships, they should be seen as a building block that can be the centerpiece of a number of follow-up processes.²⁴

Further work and leadership at the EU level to foster new technologies and review regulatory impediments to innovation will greatly assist efforts to fight financial crime, though this is not addressed in any detail in the Commission's Communication or ancillary reports. The EU, through a review of AML/CFT architecture, should encourage the process for innovation in financial regulatory technology that assists in compliance with AML/CFT regulations.

To do so, it should promote regulatory responses that are clear, actionable and consistent across member states. In the United States, for example, the Financial Crimes Enforcement Network ("FinCEN") and its regulatory partners have issued a joint statement to encourage financial institutions to take innovative approaches to combating money laundering, terrorist financing, and other illicit financial threats.²⁵ This recognizes that private sector innovation, including new ways of using existing tools or adopting new technologies, can help banks identify and report illegal financial activity by enhancing the effectiveness and efficiency of compliance programs. Such an approach should be considered at an EU-wide level in coordination with member states (and third countries where possible) and must be followed up with effective guidance on which financial institutions can rely.

At the same time, rules which may impede innovation for fighting financial crime, such as information sharing barriers or any lack of a regulatory ability to rely on centralized Know Your Customer ("KYC") utilities, for example, should be reevaluated at both the domestic level and in concert with foreign counterparts (and centralized through FATF and other relevant bodies including the BCBS and the Committee on Payments and Market Infrastructures). As we have stated before, more closely aligning this with the EBA's Fintech work would also be helpful. The regulatory environment must keep pace with technological change; this will help move from the current structure of AML/CFT compliance to a more dynamic intelligence-led financial crime risk management model.

²⁴ IIF, *Digital IDs in Financial Services Part 1: Embedding in AML Frameworks*, August 2019: https://www.iif.com/Portals/0/Files/content/Innovation/08272019_iif_digital_id_part_1.pdf.

²⁵ Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network, National Credit Union Administration, Office of the Comptroller of the Currency, *Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing*, December 2018.