

August 26, 2020

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



RE: COMMUNICATION FROM THE COMMISSION on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing

Dear Mr. Dombrovskis:

The Institute of International Finance (the “IIF”) would like to take this opportunity to offer its feedback regarding the Communication from the European Commission (the “Commission”) on the European Union’s (“EU” or the “Union”) Action Plan for a comprehensive Union Policy on preventing money laundering and terrorist financing (the “Communication” or the “Consultation”).¹ We greatly appreciate the work of the Commission in offering options for policy recommendations in this critical area and we are grateful for the wide stakeholder consultation process in advance of planned legislative proposals, including the participation of your colleagues in a June 2020 webinar on this topic with IIF members.

We very much agree with the Commission that 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 are pleased to submit this via the Commission’s online questionnaire; however, we attach this letter in order to provide a more comprehensive review of the proposals outlined along with supporting information which may not be easily referenced through the website submission. Overall, our comments address three main areas of feedback:

- 1. The need for 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”);***
- 2. The necessity for 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 the importance of enhancements to the use and adoption of technology in fighting illicit finance;***

¹ European Commission, *COMMUNICATION FROM THE COMMISSION on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing*, 7 May 2020.

3. The importance of ensuring effectiveness in global standards for AML/CFT and supporting the work of the Financial Action Task Force (“FATF”).

We strongly support the direction of the Commission’s approach in its policy reform thus far. We emphasize, however, that a focus on these key elements – coupled with a balanced approach between harmonized requirements and the risk-based approach to supervision in line with the FATF Recommendations² – would benefit the EU’s AML/CFT and financial crime risk management framework along with the broader international effort to combat illicit use of the global financial system.

The IIF values working with you on these important issues, both in the EU context and internationally through the FATF. We hope that once a legislative proposal is tabled for consideration, adoption of changes at EU and member state level can be swift in updating the Union’s anti-financial crime framework. If you have any questions, please contact me or Matthew Ekberg at mekberg@iif.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Portilla', with a stylized flourish at the end.

Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance

² FATF, *The FATF Recommendations*, Updated June 2019

Issues for consideration on an Action Plan for a comprehensive European Union policy on preventing money laundering and terrorist financing

Background: There is consensus that the current framework for fighting financial crime is not as effective as it could be, and that more needs to be done at the international, regional and national levels to help identify and stem the flow of illicit finance – an activity which supports some of the worst problems confronting society today, including terrorism, sexual exploitation, human trafficking and modern slavery, environmental crime, proliferation financing, public corruption and drug smuggling.

Financial crime is both a contributor to societal ill and a threat to financial stability, financial inclusion and national/international security. Its mitigation and prevention must be prioritized. While billions have been invested to tackle this issue, greater emphasis needs to be placed on bolstering the efforts of law enforcement with the help of the private sector and ensuring the legal and regulatory framework and financial crime risk management toolkit are enhanced to enable stakeholders to achieve more effective outcomes.³

The Commission's previous reports on this subject and the issues raised in this Consultation point to significant gaps in effectiveness of the EU AML/CFT regime that would benefit from change.⁴ As such, the Commission's Communication presents a valuable and important contribution to the way forward in many key areas. In order to assist with the finalization of future legislative proposals on these matters, we offer our feedback in line with the questions and topics presented in the online Commission questionnaire, along with some additional areas for consideration.

1. Ensuring effective implementation of the existing rules and delivering a reinforced rulebook:

Key Issues: The Commission should consider transformation of the EU Anti-Money Laundering Directives into a Regulation which would help promote a harmonized, directly applicable Union-wide anti-money laundering framework with common standards on sanctions for breach of the law. Reform in areas of financial crime information sharing, SARs management, beneficial ownership information transparency and the use of technology for financial crime risk management and compliance should be prioritized in new legislation.

The effective implementation of the EU rulebook for AML/CFT is of paramount importance. We strongly agree that monitoring and enforcement of member state compliance is a key element of ensuring common, high standards across the Union.

However, the 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. 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.

³ For further information on these issues, please also see: IIF/Deloitte, *The Global Framework for Fighting Financial Crime: Enhancing Effectiveness and Improving Outcomes*, October 2019: <https://www.iif.com/Publications/ID/3606/The-Global-Framework-for-Fighting-Financial-Crime-Enhancing-Effectiveness-Improving-Outcomes>

⁴ European Commission, *Communication: Towards a better implementation of the EU's anti-money laundering and countering the financing of terrorism framework*, July 2019.

As such, transformation of the EU Anti-Money Laundering Directives into a Regulation 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 make it harder for criminals to exploit gaps in AML/CFT protections in one jurisdiction to the further detriment of the Union, and thus eliminate one of the incentives criminals have to channel their operations through jurisdictions they know are less resilient than others.

When considering transformation of the rulebook into a common regulation, we believe benefit can be derived from a greater balance between the urgent need for further harmonization of enforced standards across member states and the application of the risk-based approach as set out by the FATF. We emphasize that greater harmonization of EU standards through a regulation is not mutually exclusive from consideration of greater alignment of the regulation with the risk-based approach which itself could be based on harmonized standards applied to the particular risks of the subject business. Indeed, international and Union level harmonization of standards in line with the FATF Recommendations will benefit cross-border efforts to tackle criminal activity in the global financial system.⁵ The EU should also ensure FATF standards and guidance are made directly applicable in the EU to avoid issues in interpretation and consistency.⁶

At the same time, work must be done to address gaps in the current regime. The Commission should address the issues concerning obstacles to information sharing, beneficial ownership transparency, SARs reform and impediments to the expansion of technology use and also bring these issues where applicable and necessary to the FATF discussions for globally coordinated action on reform:⁷

a. Improve Information Sharing

As we have outlined in detail in the past, proper management of risk in AML/CFT efforts can be improved by permitting and encouraging the better sharing of financial crime information, both domestically and internationally. 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.

It is also well recognized that information sharing can help financial institutions address risk more effectively and efficiently. For example, in the context of the ongoing global dialogue on “de-risking,”⁸ the Committee on Payments and Market Infrastructures (“CPMI”) has acknowledged that if banks in a correspondent banking relationship cannot provide additional information on

⁵ For further information, please see: *IIF, Response to EBA Consultation on Revised Guidelines on Money Laundering/Terrorist Finance Risk Factors*, July 2020: <https://www.iif.com/Publications/ID/3989/IIF-Comments-on-EBA-MLTF-Risk-Factor-Guidelines>.

⁶ For further information on the role of FATF, please see section 4 of this letter.

⁷ IBID

⁸ The term “de-risking” has become common shorthand for referring to any instances in which banks have adopted increasingly stringent financial crime-related policies to reduce their exposure to potential money laundering, terrorist financing, corruption or sanctions risk. More specifically, it relates to the strategies adopted by banks to reduce or eliminate their risk exposure. The term tends to be used particularly where multiple businesses in a given category or country are affected.

customers and specific transactions due to legal and regulatory restrictions on information exchange, correspondent banks may have no alternative but to block or reject certain transactions. This may in some cases lead to the termination of some banking relationships and contribute to financial exclusion.⁹ Further, information sharing also can reduce the compliance costs of customer due diligence which can lead to changes in customer coverage for commercial reasons.

Since 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/majority owned subsidiaries, between financial institutions and governments and between separate financial institutions, for the purpose of managing financial crime risk, any reorganization of the AML/CFT rules in the EU 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.¹⁰ Where it is not explicit, any updates to the framework via a regulation should adopt provisions which allow for the sharing of critical financial crime data – including SARs and associated underlying information. This should also address issues whereby such information can be adequately shared outside the Union and vice versa, when relevant.¹¹

As noted in the consultation, data protection and data privacy remain critical when dealing with the concept of sharing information. Whilst the protection of customer/personal data and the right to privacy are of unquestioned importance, the upholding of such principles is not mutually exclusive with sharing information on illicit financial activity where necessary to limit its furtherance.

The FATF recognized this point in February 2018, when it adopted revisions to FATF Recommendation 2 on national cooperation and coordination. The amendments expanded 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).¹² The purpose of the change

⁹ CPMI, *Correspondent Banking*, July 2016, pp. 27-28.

¹⁰ For example, under Art. 45 para 8 of Directive (EU) 849/2015 which 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.

¹¹ 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.

¹² FATF, *Outcomes FATF Plenary, 21-23 February 2018*.

was to help improve the compatibility, coordination and cooperation of AML/CFT and DPP rules in order to assist in facilitating exchanges of information.¹³

As such, the Commission should consider the FATF standards in this context and ensure there is a mechanism for dialogue in place between AML/CFT supervisory authorities (and where applicable, prudential authorities) and the relevant data protection and privacy authorities. This will help ensure that information pertinent to an incident of financial crime under consideration by authorities can be fully examined by those with a legitimate interest in the matters at hand. This mechanism should be mandated at member state level and also coordinated centrally for the Union through the European Data Protection Board (“EDPB”) and the European Data Protection Supervisor (“EDPS”).¹⁴

Central coordination on this would also benefit from a wider degree of guidance – in consultation with the private sector – in relation to the interpretation of the General Data Protection Regulation (“GDPR”) in the context of AML/CFT. This will help address a balance between legal gateways on sharing information which should be addressed in a Regulation (as noted above) and adequate protections for customer privacy.

Lastly, we believe information sharing barriers which impede the effectiveness of centralized Know Your Customer (“KYC”) utilities (or any lack of a regulatory ability to rely on the information in the utility) should be reevaluated at both the EU level and in concert with third country counterparts (and centralized through FATF and other relevant bodies including the Basel Committee and the CPMI).

b. Reform the SARs Regime

We believe there is an inherent need 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 Financial Intelligence Units (“FIU”) and related law enforcement bodies, alleviating ambiguity in regard to objectives and processes that will help enhance the effectiveness of outcomes for both sides. The relevant FIU should also be adequately resourced to meet the demands they are expected to cover.

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

¹³ We note that IIF is currently undertaking a review of the adoption of Recommendation 2 by national authorities and where AML/CFT and data protection authority dialogue can be improved nationally and regionally.

¹⁴ We note that the Committee on Payments and Market Infrastructures (“CPMI”) has raised issues regarding tensions between data protection and information sharing in their report on enhancements to cross-border payments. They found that there is in some cases real or perceived friction between information sharing and rules related to data protection, privacy and confidentiality that may restrict or prohibit information-sharing. The CPMI has also stated that limited cooperation among financial regulatory and supervisory bodies on these issues, as well as with data protection and privacy agencies, can exacerbate these possible tensions: CPMI, *Enhancing cross-border payments: building blocks of a global roadmap*, July 2020.

Similar issues on “real or perceived” barriers were found in the IIF research on information sharing, whereby internal policies at financial institutions can restrict information sharing. While this is not surprising, it calls into question whether a form of information sharing may be possible in law in a specific jurisdiction, but still might not be within a bank’s own risk appetite. In some respects, banks’ judgments behind such policies may reflect ambiguities or questions about legal requirements or risks. IIF, *Financial Crime Information Sharing Survey Report*, February 2017: <https://www.iif.com/publication/regulatory-report/iif-financial-crime-information-sharing-report>

potential money laundering cases by the FIU and the risk of potential tipping-off, if an FIU more proactively and specifically highlights which typologies of ML/TF issues it prioritizes within a given time-span and indicates whether the SAR has added value, 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. Information received from FIUs can also be used to enhance existing controls in order to embed a more targeted, proactive approach.

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, embedding regular general public sector feedback 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.

c. Improve Beneficial Ownership Transparency Regimes

We are grateful that the Consultation reflects on harmonizing rules on beneficial ownership registers to make them more transparent and more effective. 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 entree to reliable, verified, and accessible beneficial ownership information remains a priority. 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 their technical implementation or management. Criminals might shift their business to member states with a less effective framework to exploit these differences.

This gets to the heart of the need for greater cohesion in AML/CFT across the Union and we believe that the Commission has 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.

Financial institutions should also be able to fully rely on the information in the registries when conducting their due diligence. The Commission should place increased emphasis on requiring the legal entities *themselves* to be more forthcoming in a verifiable, public way to satisfy Customer Due Diligence (“CDD”) requirements. Independent, public and reliable registries should be encouraged, actively policed and backed by governments as a reliable source of due diligence information. Governments should stand by the contextual reference data they provide, ensuring it is a source upon which the regulated sector can rely both practically and legally. This approach is more likely to support consistency of information available to both financial institutions and government authorities, as well as help contain compliance costs that are factored into the commercial decisions that impact financial inclusion.

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 CDD generally.

d. Enhance innovation across the EU to improve AML/CFT efforts

As outlined in previous IIF papers on the subject, the financial crime risk management space is one that can benefit from advancements in financial technology solutions. From machine learning and data analytics to digital identity,¹⁵ it is clear that the potential to change the day-to-day approach to these matters is significant.¹⁶ Though not fully addressed in the Consultation, we believe it would be a missed opportunity for the Commission not to fully incorporate it as part of its work on AML/CFT reform.

Specifically, 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 Commission should encourage the process for innovation in financial regulatory technology that assists in compliance with AML/CFT regulations. 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.

To do so, there should be promotion of regulatory responses that are clear, actionable and consistent across member states. We have previously noted that 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.¹⁷ 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.

The Commission should also ensure the FATF Guidance on Digital ID¹⁸ and the FATF standards on Virtual Assets¹⁹ are fully integrated into EU rules and adopted by member state authorities and we are pleased the Consultation has prioritized the adoption of FATF standards. A focus on encouraging Digital ID in line with the FATF Guidance is particularly important given the Covid-19

¹⁵ 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

¹⁶ Please also see: Refinitiv, *Innovation and the Fight Against Financial Crime*: <https://www.refinitiv.com/en/resources/special-report/innovation-and-the-fight-against-financial-crime>

¹⁷ 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.

¹⁸ FATF, *Guidance on Digital Identity*, March 2020

¹⁹ FATF, *Revised FATF Standards - Virtual Assets and VASPs*, July 2019

pandemic and the prevalence of social distancing.²⁰ As such, the means of identifying people remotely for both onboarding and the conducting of transactions while also mitigating money laundering and terrorist financing risks (“ML/TF”) risks should be encouraged consistently across member states.

2. Bringing about EU-level supervision

Key Issues: The Commission’s reform of EU supervision should be as streamlined an approach as possible, with consideration 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 coordination with third country counterparts and the avoidance of unnecessary layering and duplication.

The Commission has in past reports and through this Consultation highlighted significant structural issues in the oversight of EU rules for AML/CFT.²¹ 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 Commission has also pointed out that regulatory and supervisory fragmentation impinges upon the effectiveness of cooperation among various actors concerned with the prevention of economic crime.

Some progress has been made, however, in bringing about consistency, cooperation and action in oversight and enforcement. In particular we welcome the EBA’s new role in leading the development of AML/CFT policy, coordinating across the Union and with third countries on effective cooperation, and monitoring the implementation of EU standards. As we have stressed in the past, there is an urgent need to ensure all pertinent stakeholders effectively and consistently address the risks arising from financial crime 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. The EBA’s new mandate plays an important part in these efforts.

We also believe strongly that AML/CFT considerations must be better integrated into prudential supervision. A key element of this is cooperation between prudential supervisory authorities and AML/CFT authorities, FIUs, law enforcement and the private sector. Cross-border cooperation between prudential and supervisory authorities on AML/CFT matters is crucial for financial institutions active in more than one jurisdiction. Divergences in interpretation of standards are onerous for any institution trying to aim for a consistent risk mitigation standard across its operation. Supervisors and prudential authorities should be aware that a common understanding of principles such as those issued recently by the Basel Committee²² is a welcome first step, but it needs to be followed by close alignment on the

²⁰ IIF, *Staff Paper: Financial crime risk management and the COVID-19 Pandemic: Issues for closer international cooperation and coordination*, April 2020: <https://www.iif.com/Publications/ID/3867/IIF-Staff-Paper-Financial-Crime-Risk-Management-and-the-COVID-19-Pandemic>.

²¹ European Commission, *Communication: Towards a better implementation of the EU’s anti-money laundering and countering the financing of terrorism framework*, July 2019.

²² BCBS, *Sound management of risks related to money laundering and financing of terrorism: revisions to supervisory cooperation*, July 2020.

implementation details and consistency in enforcement.²³ As noted above, coordination between AML/CFT authorities and data protection authorities is likewise critical.²⁴

It is additionally important to note that the Commission should consider how financial sanctions and countering proliferation finance (“CPF”) are addressed by the EU. As the FATF is considering updates to FATF Recommendation 1 and its interpretative note concerning targeted financial sanctions (“TFS”) related to proliferation financing as contained in FATF Recommendation 7²⁵, it would be timely to consider how the EU addresses these issues in order to ensure consistency in the global approach if international expectations shift in this regard.

As such, the IIF believes that as the Commission reflects on a legislative proposal in this area, the aim should be for as streamlined an approach as possible, with consideration 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 coordination with third country counterparts and the avoidance of unnecessary layering and duplication. Any central oversight power being considered also has to be efficient both with regards to its conduct as well as its cost-structure and this should be considered when weighing the merits of any new body versus enhanced powers in the current architecture.

It is also well documented that the level of risk can be acute from non-financial actors including, *inter alia*, law firms, company formation agents, real estate agents and casinos and we are pleased the Consultation has the ambition to look beyond the financial sector into areas like these. A review should be undertaken as to the oversight of these types of businesses in relation to financial crime to avoid gaps in centralized and coordinated oversight and enforcement. Ensuring EU wide implementation of FATF guidance and standards for these types of businesses is also critical in furthering a harmonized approach across the Union.

3. Establishing a coordination and support mechanism for financial intelligence units and enforcement of EU criminal law provisions and information exchange

Key Issues: The Commission should consider further harmonization of the function of national FIUs and the further interconnectedness of national FIUs across the Union. The Commission should also support public/private partnerships through public sector review of legal/regulatory barriers to information sharing and through enhanced, measurable and enforceable guidance on information exchange for national FIUs, financial institutions, and law enforcement that will improve the exchange of both strategic (typologies and geographic indicators, for example) and tactical

²³ Please see: IIF, *Re: Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision*, February 2020: <https://www.iif.com/Publications/ID/3752/IIF-Letter-on-BCBS-AMLCFT-and-Prudential-Supervision-Consultation>. This letter responds to the Basel Committee’s consultation on the introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision. Final guidelines were published by the BCBS in July 2020.

The Commission should carefully consider the final Basel Guidance and ensure it is properly adopted in the context of the EU architectural reform noted herein: BCBS, *Sound management of risks related to money laundering and financing of terrorism: revisions to supervisory cooperation*, July 2020.

²⁴ Please see pages 5 and 6 of this letter.

²⁵ FATF, *Public consultation on FATF’s Recommendation 1 and its Interpretive Note*, July 2020.

(underlying case data) information. Coordination with countries outside the Union should also be prioritized in this area.

The Commission has carefully considered the role of FIUs across the Union and cooperation on financial intelligence led approaches in AML/CFT and has highlighted 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.²⁶ As discussed above, SARs reform should be considered as a means to address this inadequacy; however, other areas should be examined as well.

First, we believe the Commission should consider further harmonization of the function of national FIUs and the further interconnectedness of national FIUs. This could be accomplished by clear and uniformly implemented guidance on the role, structure and cross-border cooperation mechanisms for national FIUs, which also clarifies the level and type of operational data that can be shared on legal basis. An EU platform could also be created which could incorporate the existing Europol structure of the FIU.net as a central point of confluence for cooperation and information exchange.

Second, the strengthening of public-private partnership (“PPP”) across the Union is needed. At the center of an intelligence-led financial crime model is the 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 Commission should consider where they can promote the furtherance of this 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, financial institutions, 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 Commission should also consider ways to enhance the work of the Europol Financial Intelligence Public Private Partnership (“EFIPPP”).²⁷ EFIPPP is the first truly multilateral PPP between 13 FIUs and 24 international institutions (with those numbers continually expanding) with participation across the EU and with the United States and Australia. EFIPPP is meant to provide an effective, operationally focused environment for cooperation and information exchange between Europol, law enforcement authorities, FIUs and other competent authorities, as well as regulated financial services entities, with the support of their representative bodies, under applicable law. It seeks to improve vertical and horizontal communication and to play a role as a strategic preventive arm of the AML/CFT regime across the globe.

²⁶ European Commission, *Supranational Risk Assessment report*, July 2019, p. 8. We also discuss this in the context of SARs reform in Section 1b of this letter.

²⁷ The concept of EFIPP was originally formed in October 2017 at a High-Level Forum of the Law Enforcement, Regulatory and Banking Sectors convened by Europol and the IIF.

Though EFIPPP has been very successful in bringing together diverse international stakeholders in dialogue on sharing strategic level information, it has been prevented from effective sharing on tactical data. DG FISMA should work closely with DG Home as the latter reviews the Europol mandate and should ensure the allowance of tactical level exchange to occur between EFIPPP members – both public and private – in order to address operational challenges in tackling cross-border financial crime.²⁸

We are very grateful that the Consultation takes the opportunity to address some of these points and for its expressed support for PPPs. In particular, guidance in relation to the GDPR and PPPs will greatly assist in ensuring data privacy and the proper exchange of tactical information work in hand-in-hand for both domestic and multilateral partnerships in the EU. This coupled with the suggestions outlined above will deliver significant benefits to the future EU AML/CFT structure.²⁹

4. Strengthening the EU's global role

Key Issues: Coordination at the FATF across member states and at the level of the European Commission should be prioritized by the EU. Through this coordination, Europe collectively has the opportunity to help lead efforts to advance issues which enhance the effectiveness of AML/CFT frameworks globally.

International cooperation and coordination on AML/CFT policy, and the policies around financial crime risk management more broadly, are critical in ensuring harmonized expectations in standards and enforcement around the globe. The FATF has led the way in setting international standards and evaluating compliance with those standards to deliver better outcomes for fighting economic crime. The FATF was also the first standard setter to start assessing the effectiveness of their standards in practice and has led the way in new areas, including, for example, being the first to set standards for virtual assets. Their work is also dynamic and evolving and has, in particular, made vital strides in addressing threats from terrorism.

There is, however, a serious global deficiency in the efficacy of implementation of FATF standards. The FATF assesses the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system and analyzes whether a country's legal and institutional framework is producing the expected results.³⁰ According to the FATF assessment published in September 2019,³¹ 75% of the 76 countries reviewed were found to need fundamental improvements when measured against the key goals

²⁸ For further information, please see: IIF, *RE: Inception Impact Assessment - Stronger Mandate for Europol*, July 2020: <https://www.iif.com/Publications/ID/3992/IIF-Letter-on-Europol-Mandate>.

²⁹ We note that the EDPS recently issued an opinion on the Action Plan which helpfully emphasized the call for future legislation to strike a balance between the fundamental rights of privacy and personal data protection and the measures that are necessary to effectively achieve the goals on AML/CFT. In line with the suggestions noted in Section 1a of this letter, we strongly agree with this interpretation of information sharing reform.

We however refute the assertion by the EDPS that PPPs for the sharing of operational information by law enforcement authorities to obliged entities would result in risk for the rights to privacy and data protection. Carefully calibrated rules and guidance for information sharing in line with the suggestions outlined in this letter we believe can strike the appropriate balance and allow for the sharing of the necessary tactical data – secured and protected – which is vitally needed to improve systemic effectiveness in combatting economic crime. EDPS, *Opinion 5/2020 on the European Commission's action plan for a comprehensive Union policy on preventing money laundering and terrorism financing*, July 2020.

³⁰ The FATF and its nine FATF-Style Regional Bodies (FSRBs) conduct peer reviews on an ongoing basis to assess how effectively their respective members' AML/CFT measures work in practice, and how well they have implemented the technical requirements of the FATF Recommendations. The consolidated assessment ratings covered jurisdictions across EMEA, APAC and the Americas.

³¹ FATF (September 2019) 'Consolidated assessment ratings'

that an effective AML/CFT system should achieve.³² Though the level of technical compliance with the FATF Recommendations showed better results overall,³³ the shift from a technical compliance assessment to one assessing effectiveness – and the subsequent findings of a lack of effectiveness in the implementation of what are the truly fundamental building blocks of a financial crime risk management system – emphasizes the global urgency for reform.³⁴

The European Commission and EU member states play a vital role in the FATF. Going forward, we believe that coordination across member states and at the level of the European Commission will be important. Through this coordination, Europe collectively has the opportunity to help lead efforts to address international deficiencies.

In particular, the EU and member states should coordinate on advancing work at the FATF in the following areas:

- The establishment of further risk-based global assessments by the FATF in specific areas, such the examination by the FATF of all countries at the same time on such issues as information exchange and access to beneficial ownership data. This would remove the lag time between Mutual Evaluations, which can at times slow the pace of reform.
- Implementing a regular review of the FATF methodology for assessing effectiveness by consulting closely with the private sector on how the FATF assessments could do a better job of promoting effective action by supervisors, financial institutions and other stakeholders.
- Furthering work on education, training and technical assistance across all measurements of effectiveness, including for public and private sector stakeholders. Effectively implementing standards can be improved by education, training and supporting the FATF in holding countries to account.
- Implementing a mechanism to make FATF Guidance more effective, measurable, consistent and enforceable in FATF member state jurisdictions.

Lastly, coordination between member states and the Commission at the FATF can help advance areas of reform being considered (or which should be considered) in the context of this Consultation. Specifically, where the issues outlined herein in relation to PPPs, information sharing, beneficial ownership transparency, SARs reform and expanding the use of technology have not been addressed at the FATF,

³² The table collected the results for 76 jurisdictions that were subject to a twofold assessment: (1) an evaluation of the effectiveness of the AML measures against a set of 11 immediate outcomes, which represent key goals that an effective AML/CFT system should achieve; and (2) a technical evaluation reflecting the extent to which a country has implemented the technical requirements of the FATF Recommendations.

³³ Out of the 76 jurisdictions evaluated, 39, just over 51%, were found to be non-compliant (indicating major shortcomings) in respect of one or more of the FATF Recommendations.

³⁴ The CPMI recently also addressed the need for AML/CFT rules to be applied consistently and comprehensively around the world as part of their work on enhancing cross-border payments. In their report, which will form part of the work of the Financial Stability Board in recommendations to the G20, they consider the possibility of recommendations on enhanced regional and international cooperation in AML/CFT supervisory matters, which should be encouraged in line with the work outlined in this letter. CPMI, *Enhancing cross-border payments: building blocks of a global roadmap*, July 2020.

Europe collectively should help lead in FATF efforts at reform in order bring about better standards which are internationally consistent.