

November 2, 2021

Ms. Mairead McGuinness
Commissioner for Financial Services, Financial Stability, and Capital Markets Union
European Commission
Rue de la loi 130
Brussels, 1049
Belgium



RE: Consultation on European Union Rules on Public/Private Partnerships

Dear Commissioner McGuinness:

The Institute of International Finance (“IIF”) is pleased for the opportunity afforded by the European Commission (the “Commission”) to provide comments on its consultation on European Union (“EU”) rules on Public/Private Partnerships (the “Consultation”)¹. The work of the Commission on this Consultation, and through the broader legislative proposals addressing deficiencies in anti-money laundering (“AML”) and countering the financing of terrorism rules (“CFT”) across the EU², are important opportunities to enhance effectiveness in the anti-financial crime regime at Union level and in coordination with countries across the globe.

Public/Private Partnerships (“PPP”) - which are fundamentally a collaboration between financial institutions, law enforcement, policy makers and the regulatory community to tackle financial criminality - have become an important and growing component in global anti-financial crime frameworks. Since 2014, PPPs to enable the sharing of intelligence and information have been established in over twenty countries across Asia Pacific, the Americas and Europe. The growth in PPPs has also been encouraged by the Financial Action Task Force (“FATF”), and there is now broad consensus that by developing frameworks that better enable more intelligence and insight to flow between parties, it is possible to disrupt malign actors and better prevent criminal misuse of the financial system.

Critically, PPPs have begun to change the relationship between stakeholders, building frameworks that encourage and enable parties to share information important in addressing complex and often multinational criminal incursion into legitimate financial channels. However, while global developments in PPPs are a fundamentally positive story, opportunities to do more remain and should be encouraged through regulatory and supervisory initiatives. As such, we are grateful for the chance to submit our views to the Commission on the main issues we believe should be addressed at EU level - and through discussions on cooperation with third countries - in order to enhance the functioning of domestic PPPs and, crucially, support growth in multinational partnerships.

¹ European Commission, Preventing money laundering and terrorist financing – EU rules on public-private partnerships (PPPs), July 2021.

² European Commission, *Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules*, July 2020.

In this vein, we are also pleased to attach the submission of the Europol Financial Intelligence Public Private Partnership (“EFIPPP”)³ to the Consultation, and we commend that letter to you for a broader discussion on the practical value that can be derived from PPPs, along with the limitations that currently exist in achieving their true potential.

The IIF is a founding a member of the EFIPPP and as co-Chair of its Legal Gateways Working Group, we worked with fellow EFIPPP members to prepare that submission. The views therein reflect the shared priorities of *both* the public and private sectors - Financial Intelligence Units (“FIU”), law enforcement, regulators, financial services industry bodies and financial institutions – to ensure the risks arising from money laundering and terrorist financing are addressed and cooperation to share information that will help safeguard finance against illicit activity is prioritized. As you will see, there are common objectives across both communities which we look forward to working with the Commission to achieve.

Building on that discussion, we would specifically like to emphasize the following areas where we believe further work can be undertaken to enable greater progress for public/private cooperation on financial crime matters:

- 1. Provide Support for the Establishment and Maintenance of Operational PPPs:** The Commission should support and encourage the establishment of PPPs in all EU member states through clear and measurable guidance for national FIUs, financial institutions, and law enforcement on key areas for the development of PPPs, including common objectives, milestones for effectiveness, and establishing cooperation frameworks - while at the same time building in flexibility for each partnership to mature as needed under its own particular circumstances. Resourcing should be considered in this context by ensuring it is clear that PPPs should form part of the critical infrastructure AML/CFT, and they should be supported in that regard from a regulatory perspective.

The public sector element of PPPs should also be clear in order to ensure the right bodies are represented and those bodies are aligned on prioritization of operational and strategic goals. Similarly, on the private sector side, consideration should be given to involving relevant financial institutions – including the insurance sector – and to ensuring the correct expertise is represented to maximize benefits.

PPPs should be able to share both strategic data (typologies and geographic indicators, for example) and operational or tactical data (underlying case information). A PPP limited to sharing non-operational data would not address all situations and this significantly limits the efficacy of PPPs, ultimately preventing a more successful system for financial crime risk management. This needs to be done within the construct of adjusting or clarifying legal gateways to information exchange where needed, as noted in point four below.

- 2. Provide Specific Support for Multilateral Cooperation:** The Commission should also specifically support the development of EFIPPP through enhancements to the Europol Mandate and consider

³ The EFIPPP It is the first transnational information sharing mechanism ever established in the field of Anti-Money Laundering and Counter-Terrorist Financing. It was launched in 2017 as a pilot project of the Europol- Institute of International Finance (IIF) High Level Forum of Law Enforcement, Regulatory and Banking Sector, to test and increase the possibilities for cross-border cooperation and information exchange between Europol, competent authorities (including FIUs and Law Enforcement Agencies) and regulated financial services entities. The project was renewed indefinitely in 2019.

how coordination with the private sector can be improved through that mandate.⁴ Similarly, it is important that where national PPPs exist, they should be encouraged to work closely with each other and with EFIPPP in order to share insights against potential areas of overlap and ensure that shared learning is not lost by looking at issues in isolation.⁵

- 3. Further Harmonize EU AML/CFT Rules to Support PPPs:** The Commission should continue to work with the Council and the European Parliament as its legislative proposals progress on modes of greater harmonization of EU rules around AML/CFT as a means to obviate regulatory and supervisory fragmentation which impacts on the development of PPPs. Third country cooperation should form part of this effort in order to achieve the most consistent, global financial crime risk management framework possible.
- 4. Improve and/or Clarify Legal Gateways for Information Exchange:** The Commission should explore how to enhance the legal and regulatory gateways which allow for the sharing of information between member state/third country FIUs and the private sector, in both directions – and between these entities and Europol in the context of EFIPPP. This should include work on facilitation of the sharing of critical operational financial crime data – including suspicious transaction reports (“STR”) 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. We note that European Data Protection Supervisor (“EDPS”) has emphasized the need for future work in this area 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.⁶ We strongly believe these matters are not mutually exclusive.

However, we do not agree with any assertion that the sharing of operational information by law enforcement authorities to obliged entities through PPPs 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 our submission and the submission by EFIPPP can strike the appropriate balance and allow for the secured and protected sharing of the necessary tactical data vitally needed to improve systemic effectiveness in combatting economic crime.

As such, 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

⁴ We particularly welcome comments by the Commission at the launch of the European Financial and Economic Crime Centre (EFECC) within Europol which considered the importance of sharing information with financial institutions and referenced that the Commission is consider how it could be easier for Europol to interact with the private sector. Europol, *Europol Launches European Financial and Economic Crime Center*, June 5, 2020 <https://www.europol.europa.eu/newsroom/news/europol-launches-european-financial-and-economic-crime-centre>

Similar conclusions were reached by the Council of the European Union in December 2019: <https://data.consilium.europa.eu/doc/document/ST-14745-2019-INIT/en/pdf>

⁵ This should be considered across the EU and in the context of third country cooperation.

⁶ 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

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 laid out in FATF Recommendation 2.⁷ At a minimum, the Commission should explore how the EU policy regime can provide greater clarity that operationally focused AML/CFT PPPs fulfil a 'legitimate interest' basis under the General Data Protection Regulation ("GDPR").⁸

- 5. Improve the "Feedback Loop" between the public and private sectors:** The Commission should consider how it can achieve a greater "feedback loop" between FIUs, law enforcement and the private sector on STR filing. This should entail a fundamental review of STR regimes in the EU, streamlining requirements, embedding regular public sector feedback, and providing for the identification of STR good practice and current priorities to help identify the right cases on which both law enforcement and the private sector should focus most attention. It also will be important to include supervisory authorities to ensure there is consistency between law enforcement/FIU objectives and regulatory examinations of bank STR processes.

Thank you for considering our feedback and, more broadly, the collective feedback of the EFIPPP. We echo the sentiments in the attached EFIPPP response in regard to the positive opportunity the Commission has to further develop the exchange of domestic and cross-border information on financial activity linked to crime and terrorism and to improve effectiveness in the fight against such activity through greater partnership, cooperation, and coordination across stakeholders in the EU - and with those in third countries.

We agree that a great deal has already been achieved in this area and more can be accomplished through collective action on further policy enhancements. Should you have any questions, please do not hesitate to contact me or Matthew Ekberg at mekberg@iif.com.

Very truly yours,



Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance (IIF)

Attachment: *Response of the Europol Financial Intelligence Public Private Partnership (EFIPPP) to the European Commission's Consultation on European Union Rules on Public/Private Partnerships*

⁷ FATF, *The FATF Recommendations*, Updated 2020

⁸ Article 6 and Recitals (47), (48) and (49) of the GDPR, and Article 29 Working Party Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC

Attachment

Response of the Europol Financial Intelligence Public/Private Partnership (EFIPPP) on the Consultation of the European Commission on European Union Rules on Public/Private Partnerships

November 2, 2021

The Europol Financial Intelligence Public/Private Partnership (“EFIPPP”)⁹ is grateful for the opportunity to offer its feedback to the European Commission (the “Commission”) on its consultation on European Union (“EU”) rules on Public/Private Partnerships (the “Consultation”)¹⁰. The EFIPPP, as a multilateral public/private partnership (“PPP”), strongly supports the objectives of the Commission in its overall work to mitigate, disrupt and ultimately help prevent the criminal misuse of the financial system through this Consultation and through the wider legislative proposals addressing deficiencies in anti-money laundering (“AML”) and countering the financing of terrorism rules (“CFT”) across the bloc.¹¹

As members of the EFIPPP represent Financial Intelligence Units (“FIU”), law enforcement, regulators, financial services industry bodies and financial institutions, we collectively see an urgent need to ensure that all relevant stakeholders effectively and consistently tackle the risks arising from money-laundering and terrorist financing and cooperate to share information that will help safeguard financial services, its customers, and communities against illicit activity. A framework in the EU which allows for greater coherence in public/private cooperation through established PPPs acting as a means of combating such threats is imperative.

We are therefore pleased to submit our comments on the Consultation in line with the Commission’s online request, and we attach this letter in order to provide a more comprehensive review of the

⁹ The EFIPPP It is the first transnational information sharing mechanism ever established in the field of Anti-Money Laundering and Counter-Terrorist Financing. It was launched in 2017 as a pilot project of the Europol- Institute of International Finance (IIF) High Level Forum of Law Enforcement, Regulatory and Banking Sector, to test and increase the possibilities for cross-border cooperation and information exchange between Europol, competent authorities (including FIUs and Law Enforcement Agencies) and regulated financial services entities such as banks. The project was renewed indefinitely in 2019.

Current members includes 30 competent authorities, 29 financial institutions and 13 other organizations including EU institutions, national regulatory authorities, think tanks and academia: Europol, Institute of International Finance (IIF), European Banking Federation (EBF), European Commission, Australian FIU, Austrian FIU, Austrian Agency for State Protection and Counter Terrorism, Belgian Federal Police, Belgian FIU, Dutch Anti Money Laundering Centre (AMLC), Dutch National Public Prosecutor (TFTF), Dutch FIU, Finish FIU, French National Police, German BKA, German FIU, Hungarian FIU, Hungarian National Police, Irish FIU, Italian Guardia di Finanza, Latvian FIU, Luxemburgish FIU, Maltese FIU, Spanish Guardia Civil, Spanish National Police, Spanish FIU, Swiss FIU, UK National Crime Agency, UK JMLIT, UK Metropolitan Police, US Financial Crime Enforcement Network (FinCEN), US FBI, Interpol, ABN AMRO, Bank of America, Bank of Valletta, Barclays, BBVA, BNP Paribas, Citigroup, Commerzbank, Deutsche Bank, Santander, HSBC, ING, Intesa Sanpaolo, JPMorgan, Lloyds Banking Group, Société Générale, Standard Chartered, UBS, Erste Bank, Raffeisen International, Crédit Suisse, Bankinter, Caixa Bank, UniCrédit, OTP Bank, Rabobank, PayPal, Western Union, Dutch National Bank Authority (DNB), French Regulatory Authority, UK Financial Conduct Authority (FCA), European Banking Authority (EBA), European Central Bank (ECB), European Council, Financial Action Task Force (FATF), Finance Latvia Association, Future of Financial Intelligence Sharing (FFIS), Max Planck Institute, Royal United Services Institute (RUSI), Tilburg University, University of Bologna.

¹⁰ European Commission, Preventing money laundering and terrorist financing – EU rules on public-private partnerships (PPPs), July 2021.

¹¹ European Commission, *Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules*, July 2020.

proposals outlined along with supporting information which may not be easily referenced through a website submission. Overall, our comments reflect three main areas of feedback:

- The role, objectives, and value of cross-border and domestic anti-financial crime PPPs;
- The challenges to greater public/private cooperation and information sharing on financial crime matters; and
- Recommendations on enhancing public/private partnerships and improving coordination for AML/CFT purposes.

We believe the Commission has a uniquely positive opportunity to further develop the exchange of domestic and cross-border information on financial activity linked to crime and terrorism and to improve effectiveness in the fight against such activity through greater partnership, cooperation, and coordination across stakeholders in the EU - and with those in third countries. A great deal has already been achieved in this area and more can be accomplished through collective action on policy enhancements. We stand ready as a community at EFIPPP - and individually through our own institutions - to contribute to this process and we thank you for your work and your review of our feedback.

Consultation on European Union Rules on Public/Private Partnerships

1. EFIPPP Background:

In October 2017, a High-Level Forum of the law enforcement, regulatory and financial services sectors was convened by Europol and the Institute of International Finance (“IIF”)¹². The meeting acknowledged that both the public and private sectors play a critical role in combatting financial criminal activity and welcomed the progress made by financial institutions in detecting suspicious activity, and subsequently reporting that activity to financial intelligence units to analyse and further disseminate to law enforcement.

However, it was recognised that addressing overall effectiveness in the fight against financial crime remains a significant problem which needs to be dealt with on a consistent, international basis. This is particularly important as the Commission had already urged in its 2016 Action Plan to improve the exchange of “financial intelligence” between EU FIUs and the private sector¹³, as recommended by the Financial Action Task Force (“FATF”) to better fight financial crime. Nevertheless, the amount of money laundered globally each year is still estimated at 2% to 5% of global GDP, or between EUR 715 billion and 1.87 trillion.¹⁴ Less than 1% of illicit financial flows are intercepted in the EU alone.¹⁵ This money has

¹² The IIF is the global association of the financial industry, with more than 450 members from more than 70 countries. IIF members include commercial and investment banks, asset managers, insurance companies, sovereign wealth funds, hedge funds, central banks, and development banks.

¹³ Communication from the Commission to the EU Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing, Feb. 2nd, 2016.

¹⁴ United Nations Office on Drugs and Crime (“UNDOC”): <https://www.unodc.org/unodc/en/money-laundering/globalization.html>.

¹⁵ Europol, *Financial Intelligence Group Report, From Suspicion to Action – Converting financial intelligence into greater operational impact*, September 2017.

negative societal implications – through, *inter alia*, drug smuggling, human trafficking, and terrorist activity – and it also contributes to a weakening of financial stability.

As such, it was agreed that the current AML/CFT framework could be further enhanced, and it was acknowledged that significant improvements could be reached by cultivating better, broader data-sharing practices between private and public sectors and applying an intelligence-led approach to reporting mechanisms. Such practices should be built on the concepts of necessity and proportionality and maintain a high level of protection of fundamental rights, in particular the right to the protection of personal data. The need for sharing actionable information directly stemming from criminal threat assessments with an EU-wide and international perspective was identified as a priority.

In response to this, Europol organized a pilot exercise for information exchange, whereby an experts' group between law enforcement and the private sector was formed to enable, as permissible under applicable law, the sharing of information and knowledge between Europol, competent authorities (including FIUs and law enforcement agencies) and regulated financial services firms. That pilot grew into EFIPPP as the first truly multilateral PPP, now established between 30 competent authorities, 29 financial institutions and 13 other organizations including EU institutions, national regulatory authorities, think tanks and academia; those numbers are continually expanding, with participation across the EU, United Kingdom, 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.

The success of the EFIPPP has been in the exchange of strategic intelligence between EFIPPP members, including typologies and anonymized cases, and has significantly helped improve the common understanding of financial crime risks. Financial institutions typically share the typologies generated at the EFIPPP within their groups and use their content to improve the internal monitoring and detecting systems. FIUs have also used the EFIPPP typologies directly, contributing to better identification of cases and improved Suspicious Transaction Reports ("STR"), given that it has not been impaired so far by any material legal or regulatory restrictions which could have arisen otherwise from more sensitive data (*e.g.* personal and/or client data).

Furthermore, EFIPPP members collaborate on new and emerging risks as well, including issues around the misuse of crypto-currencies, child sexual exploitation and human trafficking, missing trader intra-community ("MTIC") fraud and terrorism financing. The EFIPPP was a critical body for coordination and information sharing during the height of the COVID-19 crisis, with a dedicated working group established to address issues arising from changes to criminal behaviors and patterns as a result of the pandemic response. The community has also helped to build trust across stakeholders, resulting in increased cooperation and the sharing of expertise across borders and sectors.

However, we believe there is even more the EFIPPP – along with domestic PPPs across the EU and around the world – can do to contribute to a more effective anti-financial crime ecosystem. It is worth noting that this sharing of typologies and anonymized cases is reasonably believed to be a first step towards a more intelligence-led sharing. This, however, requires stronger regulatory and supervisory support. As such, we outline herein more generally the role, objectives, and value of PPPs, and then address the challenges

and possible solutions for improving their active function as an essential component in tackling illicit financial flows.

2. Key Consultation Issues

a. The role, objectives, and value of cross-border and domestic anti-financial crime PPPs:

At the center of an intelligence-led financial crime model which emphasizes entities, networks and behaviors is the public-private partnership, a collaboration between obliged entities, competent authorities, policy makers 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 financial crime risk management system.

The FATF has broadly supported the development of PPPs, and over 20 have already been developed around the world. At the EU level, the European Banking Authority (“EBA”) has also referred to PPPs as a relevant tool considered by many competent authorities to enhance cooperation and information exchange¹⁶; and issued guidelines setting out general provisions and practical modalities for the cooperation and information exchange between the AML/CFT supervisors, prudential supervisors and financial intelligence units, domestically and on a cross-border basis.¹⁷ As there is a clear overlap in the interests of all stakeholders in the development of such collaborative exercises, creating them can produce a more diverse and fertile basis for pooling information and can more effectively disrupt malign actors attempting to operate through the financial system.

The potential value of PPPs is illustrated by their support for law enforcement investigations and ultimately their contribution to the arrests and the seizure of illicit assets. Through this collaboration, members of PPPs can also help identify suspect accounts linked to money laundering activity, allowing them to instigate their own intelligence-led internal investigations. These in turn can lead to focused referrals to law enforcement, informed assessment of risk, and can contribute to internal training materials which help identify and prevent further financial crime through implementation of improvements in internal control frameworks.

As noted with the creation of the EFIPPP, PPPs can also create the necessary conditions to build a foundation of trust which can change the nature of the relationship between government and the financial sector to one based on principles of cooperation and the effective delivery of a collective whole system response to the threat of financial crime. These relationships create the conditions to drive forward important policy debates, to improve the quality and quantity of feedback between stakeholders, to agree shared priorities and threats which might inform the focus of regulatory expectation and the deployment of financial crime risk management resource, dependent on the priorities more broadly of the constituent members.

¹⁶ European Banking Authority (“EBA”), [Opinion of the European Banking Authority on the risks of money laundering and terrorist financing affecting the European Union’s financial sector](#) (EBA/Op/2021/04), 3 March 2021.

¹⁷ European Banking Authority (“EBA”), [Draft Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU](#) (EBA/CP/2021/21), 27 May 2021.

It is important to emphasize that PPPs build significant value at *both* the domestic and cross-border level, but that multilateral cooperation across stakeholders will remain truly vital in comprehensively addressing crime which is transnational in nature. Coordination and information exchange across institutions and governments within the EU and with third countries will make it harder for criminals to exploit gaps in financial crime protections in one jurisdiction, and thus eliminate one of the incentives criminals have to channel their operations through jurisdictions they know benefit from a less resilient national framework than others.

- b. The challenges to greater public/private cooperation and information sharing on financial crime matters

Despite the good progress made, factors remain that inhibit the further development of PPPs. These can undermine their ability to support a fully intelligence-led approach to fighting financial crime.

First, the proper management of risk in AML/CFT efforts needs to include information sharing on matters linked to crime and terrorism, both domestically and internationally¹⁸. Without adequate insights by financial institutions, law enforcement, and competent authorities 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.

However, inconsistent legal frameworks – and/or the inconsistent interpretation of those frameworks – for data protection, management of STR-type information, privacy and bank secrecy can prevent the sharing of relevant information domestically and across borders, for the purpose of managing financial crime risk.¹⁹

This has particular impact on PPPs, as often there is an absence of an underlying legal basis for the sharing of information in partnerships and, though strategic data (typologies and geographic indicators, for example), might be exchanged, operational or tactical data (underlying case information or STRs, for instance) is frequently precluded. Though EFIPPP has been very successful in bringing together international stakeholders for the sharing of strategic level information, it has been prevented from effectively sharing tactical information. A PPP limited to sharing non-operational data would not address all expectations and circumstances and this significantly limits the effectiveness of both PPPs, and the wider financial crime risk management ecosystem as a whole.

A lack of clarity in the ability to share information can be demonstrated by the existence at EFIPPP of a Legal Gateways Working Group. This working group is currently updating a mapping exercise on possibilities for intra-group sharing of financial data and the results will be shared with the Commission. The next mapping exercise will focus on extra-group sharing of Know Your Customer and STR data. However, the very necessity of such a working group embedded in a PPP illustrates the absence in many cases of regulatory clarity on how and where information can be exchanged.

Second, the functioning of the STR regime may inhibit the effectiveness of the AML/CFT regime, ultimately also preventing the PPPs to be used to their full extent. As recognized by the Commission in its AML Action

¹⁸ See, for instance, European Banking Authority (“EBA”), *Draft Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72) - The Risk-Based Supervision Guidelines* (EBA/CP/2021/11), 17.03.2021.

¹⁹ As identified as well by the European Banking Authority (“EBA”), *EBA Analysis of Regtech in the EU Financial Sector* (EBA/REP/2021/17), June 2021.

Plan, the AML/CFT legislative package proposal provides an opportunity to increase feedback by FIUs or other government entities to the private sector after STRs are filed. Similarly, some light could further be shed on the extent to which STR-related data could be subject to any onward sharing and reused to feed further analysis and reports.

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 an FIU can more proactively and specifically highlight which typologies of ML/TF issues it prioritizes within a given timespan and indicates whether the STR has added value, the regulated sector will be able to focus its efforts on filing more meaningful STRs. FIUs should also be able to provide proactive feedback on the quality and utility of STR's agnostic of the issues raised, allowing financial institutions to focus on improving the overall standard. 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. All of this could benefit the AML/CFT framework and bring together actors, in PPPs, with a more intelligence focused model for cooperation.

Third, a lack of regulatory clarity and cross-border cooperation can inhibit partnerships from being established and expanding. The Commission has recognized that 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.

Regulatory and supervisory fragmentation impinges upon the effectiveness of cooperation among various actors concerned with the prevention of economic crime. Such a lack of consistency in approach can limit the ability of partnerships to act within countries, but especially difficult when considering international connectivity.

Fourth, inadequate resourcing and support for PPPs can stymie their growth and efficacy. Though PPPs of all kinds have demonstrated their value, they are often not fully incorporated into the financial crime risk management plans of countries or, in this instance, the wider EU architecture.

Though they have built trust and collaboration across stakeholders and communities, and improved the focus and quality of STR reporting, they can often be considered as less fundamental to the anti-financial crime architecture than other components of a regime. This can impede resourcing at both the public and private sector levels, as a perception of value maybe diminished if the development and integration of PPPs more formally into the financial crime risk management framework isn't prioritized and coordination across partnerships isn't fully developed to avoid duplication or missing links.

c. Recommendations on enhancing public/private partnerships and improving coordination for AML/CFT purposes:

In order to overcome difficulties for establishing and maintaining effective PPPs, we believe the Commission should consider the following issues – both as part of its ultimate deliberations regarding this Consultation but also, where appropriate, through dialogue with the other EU Institutions on the finalization of the legislative proposal on enhancing AML/CFT rules across the bloc:

1. Based on the recognized added value of PPPs, the Commission should proactively support and encourage the establishment of PPPs in all EU member states through clear and measurable

guidance for national FIUs, financial institutions, and law enforcement on key areas for the development of PPPs, including common objectives, milestones for effectiveness, and establishing cooperation frameworks - while at the same time building in flexibility for each partnership to mature as needed under its own particular circumstances. Resourcing should be considered in this context by ensuring it is clear that PPPs should form part of the critical AML/CFT infrastructure, and they should be supported in that regard from a regulatory perspective. Ensuring cross-PPP sharing would also help to maximize benefit and alleviate duplication concerns. This is particularly true when considering some institutions span multiple jurisdictions and are involved in multiple partnerships.

While supporting the development of PPPs in general, the Commission should also support the development of transnational PPPs such as the EFIPPP. In this context, and within clear legal and data protection frameworks, exchange of financial information and intelligence between Europol and financial institutions should be promoted to the maximum extent possible.

Similarly, it is important that where national PPPs exist, they should be encouraged to work closely with each other and with EFIPPP in order to share insights against potential areas of overlap (*e.g.*, routes and techniques used in trade-based money laundering and environmental crime, for instance) and ensure that shared learning is not lost by looking at issues in isolation or, as noted above, risking the duplication of efforts.²⁰

Lastly, the Commission should continue to work with the Council and the European Parliament as its legislative proposals progress on modes of greater harmonization of EU rules around AML/CFT as a means to obviate regulatory and supervisory fragmentation which impinges on the development of PPPs. Third country cooperation should form part of this effort in order to achieve the most consistent, global financial crime risk management framework possible.

2. The Commission should explore how to enhance the legal and regulatory gateways which allow for the sharing of information between member state/third country FIUs and the private sector, in both directions – and also within national PPPs and cross-border PPPs such as the EFIPPP. This should include work on facilitation of the cross border sharing of critical operational financial crime data – including STRs and associated underlying information – 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. That being said, we may still observe legal and regulatory discrepancies as to sharing such STR-related data where there is no common client and transaction or to sharing with branches or subsidiaries of a same group (and not with the parent company only).

The balance between data privacy/data protection and the sharing of financial crime information is also essential. We note that European Data Protection Supervisor (“EDPS”) has emphasized the need for future work in this area 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.²¹ These matters are not mutually exclusive.

²⁰ This should be considered across the EU and in the context of Third Country cooperation.

²¹ 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

However, we believe any assertion that sharing of operational information by law enforcement authorities to financial institutions through PPPs would result in risk for the rights to privacy and data protection is largely inaccurate. Carefully calibrated rules and guidance for information sharing in line with the suggestions outlined in this letter 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.

As such, 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 and prompt 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 laid out in FATF Recommendation 2.²² At a minimum, the Commission should explore how the EU policy regime can provide greater clarity that operationally focused AML/CFT PPPs fulfil a ‘legitimate interest’ basis under the General Data Protection Regulation (“GDPR”).²³

Lastly, the Commission should consider how it can achieve a greater “feedback loop” between FIUs, law enforcement and the private sector on STR filing. This should entail a fundamental review of STR regimes in the EU, streamlining requirements, embedding regular public sector feedback, and providing for the identification of STR good practice to help identify the right cases on which both law enforcement and the private sector should focus most attention while ensuring practicality in responding to dynamic or changing concerns.

²² FATF, *The FATF Recommendations*, Updated 2020

²³ Article 6 and Recitals (47), (48) and (49) of the GDPR, and Article 29 Working Party Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC