

Finanstilsynet

HVID

J.nr.

/ERO

Public Consultation questionnaire [Denmark]

Ensuring effective implementation of the existing rules

How effective are the following existing EU tools to ensure application and enforcement of anti-money laundering / countering the financing of terrorism rules?

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
Infringement proceedings for failure to transpose EU law or incomplete/incorrect transposition	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Country-specific recommendations in the context of the European Semester	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Action following complaint by the public	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Breach of Union law investigations by the European Banking Authority	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New powers granted to the European Banking Authority	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How effective would more action at each of the following levels be to fight money laundering and terrorist financing?

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
At national level only	X		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At national level with financial support and guidance from the European Union	X		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At the level of the European Union (oversight and coordination of national action)	X			<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At international level	X		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No additional action at any level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>

Generally, we believe that actions to fight money laundering and terrorist financing can be relevant and effective on all levels, though depending on the type of action it can be more effective on a national level or on EU-level.

In order to ensure more effective implementation of rules, we should look into the questions of harmonization, cross-border cooperation, cooperation with the private sectors and international efforts.

As to harmonization (also see text further below), we should look into raising our minimum standards in order to further strengthen national and supranational regimes.

As to cross-border cooperation, we should look into strengthening areas that have already proven effective. As an example, AML/CFT supervisory colleges have proven to be a very effective tool for cross-border supervision and information exchange. We should look into making these colleges mandatory and enhance our cooperation in them by increasing the intensity of meetings (when relevant, virtual meetings can be held in between actual college-meetings), joint-inspections and information sharing as well as, when relevant, include other competent authorities such as prudential supervisors, FIUs etc. Furthermore, we could include the new EU-level supervisor as a participant in the AML/CFT colleges.

As to cooperation with the private sector, we should look into assisting in building technological infrastructures to focus their AML/CFT efforts on suspicious customers and keep track of these customers moving from one obliged entity to the other.

As to international efforts, we should look into how we can better and faster implement international standards into our EU regulatory framework. Also, we should look into raising international standards, in particular where EU-rules are stricter and more effective than international standards. An example of this is our requirements with regard to beneficial owners.

Should other tools be used by the EU to ensure effective implementation of the rules?

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to ensure effective implementation it is likewise very important that the interaction between an AML/CFT Directive and other regulation, such as GDPR, is assessed and taken into account when paving the way forward in order to ensure that potential conflicting provisions are addressed.

A final remark regarding the questions on the effectiveness of actions at different levels: the added-value depends entirely on how the action is designed and undertaken. The important part is to focus on the interaction between the various levels and not disrupting well-functioning value chains.

Delivering a reinforced rulebook

The Commission has identified a number of provisions that could be further harmonised through a future Regulation. Do you agree with the selection?

	Yes	No	Don't know
List of obliged entities	X	<input type="radio"/>	<input type="radio"/>
Structure and tasks of supervision	<input type="radio"/>	<input type="radio"/>	X
Tasks of financial intelligence units	X	<input type="radio"/>	<input type="radio"/>
Customer due diligence	X	<input type="radio"/>	<input type="radio"/>
Electronic identification and verification	X	<input type="radio"/>	<input type="radio"/>
Record keeping	X	<input type="radio"/>	<input type="radio"/>
Internal controls	X	<input type="radio"/>	<input type="radio"/>
Reporting obligations	X	<input type="radio"/>	<input type="radio"/>
Beneficial ownership registers	<input type="radio"/>	<input type="radio"/>	X
Central bank account registers	<input type="radio"/>	<input type="radio"/>	x
Ceiling for large cash payments	X	<input type="radio"/>	<input type="radio"/>
Freezing powers for financial intelligence units	<input type="radio"/>	X	<input type="radio"/>
Sanctions	<input type="radio"/>	X	<input type="radio"/>

What other provisions should be harmonised through a Regulation?

We general support transforming parts of the AML/CFT Directive into a Regulation. Obviously, further harmonisation should raise minimum standards and not lower actual standards in Member States with strong national regimes. Going from a (minimum harmonisation) Directive to a Regulation should not lead to a less (strict) regulation in Member States.

If the high standards of the additional national rules in Member States that goes beyond the Directives minimum standards can be ensured, we support moving certain parts of the EU AML/CFT framework into a Regulation - especially in certain areas where EU Regulation is already implementing common global standards, e.g. from FATF. This will also make the implementation of changes in the FATF recommendations speedier.

It should be noted that a Regulation lacks the opportunity for national adaptation, e.g. use of national digital and data systems. Therefore, it is important to maintain a risk-based as well as technology and data infrastructure neutral approach.

It is also important that any (possible) conflicting regulation is taken into account, when assessing the way forward.

The area covering the obligations on obliged entities could merit further harmonisation. Especially, the regulatory understanding and requirements relating to customer due diligence (CDD) is e.g. an area which could merit further alignment in our view, as there seems to be some differences in the way the requirements are understood. This could furthermore provide better opportunities for the development of common/shared technology and infrastructure. New digital infrastructure would help companies to better fight ML/TF by sharing information (e.g. regarding CDD).

It is also our experience that there should be a better opportunity for obliged entities to exchange specific information across Member States in order to concentrate efforts on companies and customers considered suspicious.

Furthermore, increased harmonisation could be beneficial for all Member States with regard to supervisory responsibilities in cross border situations, i.e. home/host supervision, as well as in situations where obliged entities operate establishments in other Member States through networks of (passported) agents. There seems to be ambiguity as to whether agents should be under national supervision. Some Member States require agents to be under national legislation but others do not. The possibilities for host authorities to address obliged entities in other Member States with agents in the host Member State should be improved.

In continuation of the abovementioned, we are also positive towards discussing harmonization regarding:

AML/CFT Directive:

Articles 1-5 (general provisions) are necessary in both the Directive and the regulation.

Article 9 (third country policy) We see the area of high-risk third countries as part of the Directive, which would merit further harmonisation and where there is a certain degree of harmonisation already. Third country policy could possibly be transferred to a Regulation since harmonised provisions in relation to third countries would help strengthen the EU's "external border"..

Article 50 (Cooperation with the ESAs) could be placed into a Regulation. There should be harmonized rules for cooperation with ESAs.

Articles 51-57 (Cooperation between FIUs and the Commission) could be placed into a Regulation as it does not preclude increased harmonisation in terms of the Commission report on FIUs.

Article 57a-57b (Cooperation between Competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy) could be placed into a Regulation. There should be harmonised rules for enhanced cooperation between competent authorities and other relevant authorities.

Articles 63-69 (Final provisions) are necessary in both the directive and the Regulation.

What provisions should remain in the Directive due to EU Treaty provisions?

- **Articles 6-8** (risk assessments) Even though we do see differences in national regimes regarding this point, these provisions seem to mostly belong in a Directive. We should however focus on enhancing guidelines and best practices. Further harmonization could hinder innovative national solutions.
- **Articles 40-44** (Data protection, record-retention and statistical data) seems to be best achieved by being able to adapt them to national practice and could therefore be preserved in the Directive.
- **Articles 47-48** (supervision) We should ensure an efficient division of labour between such an EU AML body and national AML authorities with fast and smooth interactions. National AML authorities should continue to play a key role in a new integrated AML system and the supervisory powers could in general remain in a Directive.. The scope for the EU-supervisory body should be transferred into a Regulation e.g. direct supervision of some obliged entities, coordinating cross-border efforts including national oversight and assisting with expert assistance in complex international cases.
- **Article 49** (national cooperation) should be kept in the Directive as Member States should have a say in how to organise themselves nationally. We note that it may lead to differences in the supervisory landscape across the EU (or rather, a continuation of the existing landscape).
- **Article 58-62** (sanctions) should be kept in the Directive. We see a challenge in relation to harmonisation of administrative sanctions. In our view, this is an area where it is important to keep national discretion. MS have different legal and sanctioning practices that needs to be taken into consideration.

What areas where Member States have adopted additional rules should continue to be regulated at national level?

In general, we should be cautious towards limiting the possibility for MS to adopt additional, more stringent rules. As such, a possible future Regulation should raise the bar and create a level playing field notwithstanding some flexibility for stricter national rules. This flexibility is needed in situations where 1) a national context warrants it and 2) where international standards are not yet implemented into EU-law (resulting in Member States not being in compliance with i.e. FATF recommendations).

As to the first situation, in Denmark, we have adopted a complete ban on the use of the 500 EUR note as this was a measure commensurate to the risk and context in Denmark.

Furthermore, for entities not covered by the Danish AML-act, a cash limit (prohibition) of 50.000 DKK has been set for payments that take place at once or as several payments which appear to be linked,

As to the second situation, we need a swifter adoption of FATF recommendations than what is currently the case.

In Denmark we have implemented additional national rules ensuring that designations pursuant to all UN sanctions regimes are implemented in Denmark without delay. Furthermore, in relation to virtual asset service providers, we see that many MS adopts additional national rules to include these as obliged entities under national AML/CFT laws.

On a final note, as described above, rules regarding sanctions (and the possibility to adopt additional national rules in relation hereto) should be kept in the Directive, as there are significant differences in what sanctions are proportional, dissuasive and effective from MS to MS. There must be a discretion to consider sanctioning policy for AML/CFT in light of other domestic sanctioning policy and the use of other tools to incentivise compliance. As such, we especially consider that the assessment of the seriousness of breaches intervenes with national criminal justice systems.

In addition to this, we would like to note that in Denmark, through a number of political agreements, we have adopted several additional sanctioning possibilities. An example of this is the possibility for the DFSA to order a temporary stop for new customers.

Should new economic operators (e.g. crowdfunding platforms) be added to the list of obliged entities?

Generally, we do not find it necessary to add new economic operators to the list of obliged entities in cases where the operators are not in possession of funds. Parties handling funds on behalf of operators already fall under the remit of existing AML/CFT frameworks through regulations bespoke to the given activity. For example crowdfunding platforms that handle the transfer of funds between the owners of the marketed projects and the lenders/investors, are regulated under either PSD2 or MiFID (which will also be the case when the crowdfunding regulation takes effect).

However crowdfunding platforms and similar economic operator might need extra consideration since they are only regulated under the new crowdfunding regulation, and will not be allowed to handle funds on behalf of the participants. This could open the door for criminals wanting to abuse such platforms to create fake investments or loans with illegal proceeds, by both being the owner of marketed projects on crowdfunding platforms and the investor/lender. Thus, the platform could successfully have registered an agreement by both parts, but as they do not handle the underlying transactions, they cannot validate that the proceeds has actually been transferred.

In your opinion, are there any FinTech activities that currently pose money laundering / terrorism financing risks and are not captured by the existing EU framework? Please explain

Some types of activity that are not sufficiently captured by the current EU framework regarding AML/CFT are those concerning crypto-assets. The FATF standards on VASPs are not fully implemented in the current AMLD. It would be beneficial to see a further EU level implementation of the standards, since national regulation can cause a fragmented framework and lead to an unlevel playing field.

The Commission has identified that the consistency of a number of other EU rules with anti-money laundering / countering the financing of terrorism rules might need to be further enhanced or clarified through guidance or legislative changes. Do you agree?

	Yes	No	Don't know
Obligation for prudential supervisors to share information with anti-money laundering supervisors	X	<input type="radio"/>	<input type="radio"/>
Bank Recovery and Resolution Directive (Directive 2014/59/EU) or normal insolvency proceedings: whether and under what circumstances anti-money laundering grounds can provide valid grounds to trigger the resolution or winding up of a credit institution	<input type="radio"/>	X	<input type="radio"/>
Deposit Guarantee Schemes Directive (Directive 2014/49/EU): customer assessment prior to pay-out	X	<input type="radio"/>	<input type="radio"/>
Payment Accounts Directive (Directive 2014/92/EU): need to ensure the general right to basic account without weakening anti-money laundering rules in suspicious cases	X	<input type="radio"/>	<input type="radio"/>
Categories of payment service providers subject to anti-money laundering rules	X	<input type="radio"/>	<input type="radio"/>
Integration of strict anti-money laundering requirements in fit&proper tests	<input type="radio"/>	X	<input type="radio"/>

Are there other EU rules that should be aligned with anti-money laundering / countering the financing of terrorism rules?

We see an overall need for a clarification of the interplay between AML rules and GDPR, in particularly in regards to banks' Customer Due Dilligence (CDD) utility models. This is an important aspect that needs to be addressed if GDPR rules create undue barriers, which inhibit AML/CTF efforts.

In this context, a central register linking national bank accounts would be a decisive advantage when combating international crime and ML/TF.

Additional comments

We find that there is a need for an overall virtual currency framework in order to facilitate and provide the basis for the tools needed to address and combat possible ML/TF by the use of virtual currencies.

While AMLD5 does provide some regulation in this regard, we note that FATF's requirements for regulating virtual assets go beyond the Directive, which can create some problems for Member States.

In general, we believe that the EU should adopt FATF recommendations quicker than is currently the case, in order to ensure that national AML/CFT frameworks are FATF-compliant at all times.

We believe that harmonisation and development of common technological infrastructure should likewise be a key priority. As such, the Commission should investigate and possible launch an initiative to support technological infrastructure developments to more effectively combat ML/TF

We are open to discuss whether the removal of restrictions to cooperation among competent authorities is sufficient or whether the legislative framework should introduce explicit obligations for competent authorities to exchange information and to cooperate. This could be done in the form of making supervisory colleges obligatory for international banks and for other obliged entities (e.g. money remitters with agents in host Member States) where this would be relevant, on a risk-based approach.

As the proliferation of financing of weapons of mass destruction is steadily becoming a part of the risk based approach in FATF, we should consider if and how this aspect could be covered by the AMLD/AML-regulation.

Bringing about EU-level supervision

What entities/sectors should fall within the scope of EU supervision for compliance with anti-money laundering / countering the financing of terrorism rules?

- All obliged entities/sectors
- All obliged entities/sectors, but through a gradual process
- X Financial institutions
- Credit institutions

What powers should the EU supervisor have?

at most 1 choice(s)

- Indirect powers over all obliged entities, with the possibility to directly intervene in justified cases
- Indirect powers over some obliged entities, with the possibility to directly intervene in justified cases
- Direct powers over all obliged entities

- Direct powers only over some obliged entities
- A mix of direct and indirect powers, depending on the sector/entities

How should the entities subject to direct supervision by the EU supervisor be identified?

- They should be predetermined
- They should be identified based on inherent characteristics of their business (e.g. riskiness, cross-border nature)
- They should be proposed by national supervisors

Which body should exercise these supervisory powers?

- The European Banking Authority
- A new EU centralised agency
- A body with a hybrid structure (central decision-making and decentralised implementation)
- Other

If other: please explain

We believe that we should look into the possibility of a new dedicated body to be created as the EBA today does not perform direct supervision but are tasked with supplementing the regulation through regulatory technical standards and guidelines, and ensuring supervisory convergence between the supervisory authorities performing supervision in the EU. Furthermore, if the new EU-level supervisor is to possibly expand its range of supervision to i.e. DNFBPs, this could prove challenging for EBA as these fall outside of their scope.

Additional comments

An EU AML supervisor could be a key initiative in fighting money laundering and terrorist financing in the EU. We therefore support exploring the establishment of an EU AML supervisory body with certain powers.

We support that a European AML body should focus its efforts on the financial sector where the added value and relevance could be particularly high.

We support and recommend a step by step expansion of the scope of EU-level supervision to other sectors and entities, although we believe supervision of financial institutions is the proper starting point for EU-level supervision. We believe expansion of the scope of EU-level supervision to other sectors and entities should await and be based on experience and results gained from EU-level supervision of financial institutions. We are still analyzing which sectors and entities are relevant to potentially be included in the scope of EU-level supervision.”

The step-by-step approach should further more depend on the risk that these sectors pose, the nature of certain sectors and depending on the knowledge and results from EU-supervision with financial institutions.

In general, we support conferring certain AML supervisory tasks and powers to an EU supervisory body. An EU AML supervisory body has the potential to add value and significantly strengthen our EU AML regime if properly designed.

As such, it should be given a mix of direct and indirect powers, depending on the sector/entities primarily action on a comply or explain basis through NCAs. Such a body could have direct powers towards institutions based on a predictable framework. Direct powers could be especially relevant for cross border institutions.

We are still analysing what would be the most optimal organisational choice for a possible EU AML supervisory body. The question also links intrinsically to the question regarding which obliged entities and sectors it should encompass.

There are advantages and disadvantages to the different possible solutions that needs to be further and comprehensively analysed. However, we find that a solution with EBA having direct supervision authority will be difficult with the current organisational set-up and governance structure. An AML/CFT supervisory body needs an independent and transparent set-up, and we find that a solution should be found in a new AML/CFT supervisory body, if the body is to have direct supervision powers.

Other perspectives which should be considered are the costs involved relative to the benefits, and how an EU supervisory body could be introduced without leading to a duplication of processes or loss of local knowledge of the supervised entities ect. We should generally ensure an efficient division of labour between such an EU AML body and national AML authorities with fast and smooth interactions. National AML authorities should continue to play a key role in a new integrated AML system.

Obliged entities which are in the scope of the EU-level supervisor should be selected on a risk based approach, more specifically on the inherent risk that the obliged entity poses to the financial markets.

General coordinating with national supervisors e.g. in cross-border cases, and assisting with expert assistance in complex international cases and clarify disputes regarding supervision could be part of the tasks and responsibilities of an EU body.

Any way forward should result in a creating a framework for sharing and developing best practices.

An EU body could also play a key role in assisting/supporting the financial sector in building a common infrastructure that can strengthen customer due diligence processes with respect to legal certainty for individual customers.

Establishing a coordination and support mechanism for financial intelligence units

Financial intelligence units (FIUs) play a key role in the detection of money laundering and identification of new trends. They receive and analyse suspicious transaction and activities reports submitted by obliged entities, produce analyses and disseminate them to competent authorities.

While financial intelligence units generally function well, recent analyses have shown several weaknesses. Feedback to obliged entities remains limited, particularly in cross-border cases, which leaves the private sector without indications on the quality of their reporting system. The cross-border nature of much money laundering cases also calls for closer information exchanges, joint analyses and for a revamping of the FIU. net — the EU system for information exchange among financial intelligence units. Concerns regarding data protection issues also prevent Europol, under its current mandate, to continue hosting this system.

An FIU coordination and support mechanism at EU level would remedy the above weaknesses. Currently, the only forum available at EU level to coordinate the work of FIUs is an informal Commission expert group, the FIU platform.

This section aims to obtain stakeholder feedback on a) what activities could be entrusted to such EU coordination and support mechanism and b) which body should be responsible for providing such coordination and support mechanism.

Which of the following tasks should be given to the coordination and support mechanism?

- Developing draft common templates to report suspicious transactions
- Issuing guidance
- Developing manuals
- Assessing trends in money laundering and terrorist financing across the EU and identify common elements
- Facilitating joint analyses of cross-border cases
- Building capacity through new IT tools
- Hosting the FIU.net

Which body should host this coordination and support mechanism?

at most 1 choice(s)

- The FIU Platform, turned into a formal committee involved in adopting Commission binding acts
- Europol, based on a revised mandate
 - A new dedicated EU body
 - The future EU AML/CFT supervisor
 - A formal Network of financial intelligence units

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We welcome the efforts to strengthen the fight against international financial crime. In this fight, the national FIUs play a significant role.

We support the idea of increased coordination and support at EU level. However, it is important to clarify the scope and design of such a mechanism in order to ensure that it will facilitate cooperation between FIUs, on the one hand, and that, on the other, it will support the work on national FIUs operational work, thereby supporting ongoing efforts in the field.

On the present basis and subject to further assessment we have a preliminary preference for placing this coordination and support mechanism at Europol, provided that a number of issues, among others that the concerns regarding data protection, is solved.

Enforcement of EU criminal law provisions and information exchange

Recent actions have increased the tools available to law enforcement authorities to investigate and prosecute money laundering and terrorist financing. Common definitions and sanctioning of money laundering facilitate judicial and police cooperation, while direct access to central bank account mechanisms and closer cooperation between law enforcement authorities, financial intelligence units and Europol speed up criminal investigations and make fighting cross-border crime more effective. Structures set up within Europol such as the Anti-Money Laundering Operational Network and the upcoming European Financial and Economic Crime Centre are also expected to facilitate operational cooperation and cross-border investigations.

Public-private partnerships are also gaining momentum as a means to make better use of financial intelligence. The current EU framework already requires financial intelligence units to provide feedback on typologies and trends in money laundering and terrorist financing to the private sector. Other forms of partnerships involving the exchange of operational information on intelligence suspects have proven effective but raise concerns as regards the application of EU fundamental rights and data protection rules.

This section aims to gather feedback from stakeholder on what actions are needed to help public-private partnership develop within the boundaries of EU fundamental rights.

What actions are needed to facilitate the development of public-private partnerships?

NOTAT

- Put in place more specific rules on the obligation for financial intelligence units to provide feedback to obliged entities
- Regulate the functioning of public-private partnerships
 - Issue guidance on the application of rules with respect to public-private partnerships (e.g. antitrust)
 - Promote sharing of good practices

Additional comments

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

National public-private partnerships should be able to be established with due regard to national circumstances and of course in accordance with current legislation.

In addition, it should be possible for national law enforcement authorities to assess for themselves, which obliged entities should participate in public-private partnerships.

Strengthening the EU's global

	Very effective	Rather effective	Neutral	Rather ineffective	Not effective at all	Don't know
Give the Commission the task of representing the European Union in the FATF	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Push for FATF standards to align to EU ones whenever the EU is more advanced (e.g. information on beneficial ownership)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Additional comments

We strongly oppose giving the Commission the task of representing the European Union in the FATF if this is meant as representing MS as “one member”.

We fully support a stronger EU/COM in the FATF (also in regard to increased coordination with MS), but the work in FATF cover more than our common directive-based rules. The work in FATF also cover MS independent foreign policy. Furthermore, we risk losing European influence and undermine the very outcome that we desire.

We fully support pushing for FATF standards to align more with EU ones, where the EU is more advanced. Again, this is best achieved by enhancing coordination and cooperation between the Commission and MS. In this regard, the Commission should look into increasing coordination and cooperation with MS who are not members of the FATF.