

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		X				
Country-specific recommendations in the context of the European Semester			X			
Action following complaint by the public		X				
Breach of Union law investigations by the European Banking Authority		X				
New powers granted to the European Banking Authority			X			

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		
At national level with financial support and guidance from the European Union				X		
At the level of the European Union (oversight and coordination of national action)	X					
At international level		X				
No additional action at any level				X		

Should other tools be used by the EU to ensure effective implementation of the rules? (5000 characters max, including spaces and line breaks)

Money laundering and terrorist financing (ML/TF) are often cross-border issues, which therefore require cross-border tools. Since the Anti-Money Laundering Directive (AMLD) offers minimum harmonisation, European norms are implemented differently throughout the EU. These legislative differences can make it difficult for obliged entities with cross-border operations to

be compliant in other Member States. They also create difficulties in supervision of the anti-money laundering/countering the financing of terrorism (AML/CFT) rules, when a branch is opened in one Member State, but the head office is located in a different Member State, which has a different explanation of the AML/CFT rules.

Moreover, the current organization of AML/CFT supervision at national level undermines the effectiveness of the AML/CFT-framework and is less effective in dealing with the cross-border nature of the financial sector. The variance in national supervision also brings about the risk that precisely those Member States that are most effective in uncovering ML/TF, are also most likely to suffer reputational damage because of it. Furthermore, it makes it difficult to safeguard a level playing field.

Action at European level is required to secure the integrity and reputation of the European financial sector

In order to strengthen the AML/CFT-framework, it is necessary to complement the current instruments with additional action at EU-level through the introduction of a central European AML/CFT-supervisor and a Single Rulebook. Further harmonization through a regulation is required. A regulation is more suitable to tackle the cross-border ML/TF issues and is a requirement for a proper functioning of the European AML/CFT-supervisor. Without delaying the swift introduction of the European AML/CFT-supervisor, its establishment and the introduction of the regulation should preferably go hand in hand, as this will increase the effectiveness of the functioning of the supervisor.

A central European AML/CFT-supervisor would help improve the integrity of the AML/CFT-framework and would increase the effectiveness of AML/CFT-supervision, especially when viewed in light of the cross-border nature of the financial sector. The supervisor:

- should be established as a new European agency. A new agency is more likely to tackle the problems described above with a systemic view;
- will by its very nature work across national borders and will be able to supervise cross-border activities directly;
- can facilitate and improve coordination, cooperation and the exchange of information between national competent authorities;
- can improve the consistency and effectiveness of AML/CFT practices within the EU.

Additional comments (5000 characters max, including spaces and line breaks)

See comments above.

Delivering a reinforced rulebook

The Commission had 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		
Structure and tasks of supervision	X		
Tasks of FIU's		X	
Customer due diligence	X		
Electronic identification and verification	X		
Record keeping	X		
Internal controls	X		
Reporting obligations	X		
Beneficial ownership registers		X	
Central bank account registers		X	
Ceiling for large cash payments	X		
Freezing powers for FIU's			
Sanctions	X		

What other provisions should be harmonised through a Regulation? (5000 characters max, including spaces and line breaks)

General comments to the chart

The main objective for the Netherlands is the creation of a more effective AML/CFT-framework by improving clarity and eliminating the possibility for differences in interpretation between Member States for obliged entities, the national competent authorities supervising these obliged entities and the central European AML/CFT-supervisor. Further harmonisation of material AML/CFT provisions through a regulation is required, in order to achieve this. To that end, the provisions that are most important to harmonise are those concerning 'customer due diligence', 'record keeping', 'reporting obligations', 'internal controls' and 'administrative sanctions'. In regard to the list of obliged entities and administrative sanctions that can be imposed by the central European AML/CFT supervisor, the Netherlands wishes to underline that the harmonisation of these subjects should not go further than is necessary for the functioning of the central European AML/CTF supervisor. Criminal sanctions should remain within the competence of the Member States.

Substantive comment to the chart

The Netherlands has left the box in regards to the freezing powers of the FIUs unanswered. This is because, the answer to that question depends on the interpretation of 'freezing powers', also

taking into account that there are different (EU) FIU models and the interpretation does not prejudice or alter a Member States' choice for a particular model.

Additional themes

The Netherlands additionally considers the reassessment of the AML/CFT-framework as a welcome opportunity to harmonise the Member States' approach on the following four issues: (1) virtual asset providers, (2) ceilings for large cash payments, (3) risk assessments, and (4) enhancing the possibilities of data sharing between obliged entities and more guidance in general on the sharing of data.

(1) Virtual asset providers pose emerging ML/TF risks and are only partially covered by the directive. The introduction of a regulation provides a possibility to tackle this issue in a unified matter. Therefore, the Netherlands advocates to include virtual asset providers within the scope of the regulation, in line with the FATF-standards.

(2) Although some Member States have already introduced a ceiling for large cash payments, a more unified approach would be more effective. The Netherlands is therefore an advocate for the introduction of a ceiling for large cash payments throughout the EU. With regard to the determination of the ceiling, a balance should be struck between the importance to counter AML/CFT and the importance of not unnecessarily restraining the legitimate use of cash payments. In addition, the Netherlands calls on the Commission to address more forcefully the high AML/CFT risks related to the 500 euro note, also taking the legal tender status of the note and the role of the ECB into account.

(3) The systematic integrity risk assessment (SIRA) provides obliged entities with essential information about the nature and level of ML/TF risks (among other integrity risks) that are related to the clients, services and products, transactions and delivery channels of the obliged entities. This assessment is the basis for the design of the AML/CFT control framework (policies, systems and procedures) that must be reviewed at regular intervals. Moreover, it enables the obliged entities to determine whether the identified ML/TF risks are mitigated properly by the control measures and whether any residual ML/TF risks are acceptable. The outcome of the risk analysis will therefore serve as a steering document for management. Harmonizing the approach in which this risk assessment takes place will create a higher level playing field.

(4) The reassessment of the AML/CFT-framework is a chance to enhance the possibilities for the sharing of data between obliged entities and to give more guidance on the intercommunication between the GDPR and other specific legislation regarding the sharing of data, and the AML/CFT-framework in general. The sharing of data can be a useful tool for obliged entities to fulfil their role as gatekeepers. More clarity on the data that can be shared between obliged entities, in line with the GDPR and the tipping-off ban, would be welcome. The Netherlands is also in favour of more EU guidance and sharing of good practices regarding national public-private partnerships.

What provisions should remain in the Directive due to EU treaty provisions? (5000 characters max, including spaces and line breaks)

See box and comments above.

What areas where Member States have adopted additional rules should continue to be regulated at national level? (5000 characters max, including spaces and line breaks)

The Netherlands has introduced specific AML/CFT legislation for corporate services providers (*trustkantoren*), which is stricter in parts than the AML/CFT provisions for financial institutions. The Netherlands considers it undesirable if harmonization of AML/CFT provisions would result in less strict rules being applied to this sector in the Netherlands than is currently the case, taking into account the inherent high ML/TF risks of this sector.

Should new economic operators (e.g. crowdfunding platforms) be added to the list of obliged entities? (5000 characters max, including spaces and line breaks)

Crowdfunding
 Article 45, paragraph 2, sub p, of the Crowdfunding Regulation contains the instruction to the European Commission to – within 36 months after the date of entry into force of this Regulation – present a report to the European Parliament and the Council on the application of the Regulation, accompanied where appropriate by a legislative proposal. This report shall include an assessment of the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with national law implementing Directive (EU) 2015/849 in respect of money laundering or terrorist financing, and adding such crowdfunding service providers to the list of obliged entities for the purposes of that Directive (EU).

The Netherlands supports this assessment. Crowdfunding service providers offer possibilities for ML/TF risks because they operate (predominantly) online. This makes it potentially easy to transfer funds internationally and anonymously. As crowdfunding grows as a way to raise funds, so do the associated potential ML/FT risks and possibilities for criminals. The low barriers to entry make it relatively easy to invest and attract funds without going through a rigorous approval process at traditional lenders or investors. Crowdfunding is furthermore characterized by a multitude of small payments, which individually may not be flagged as AML/CFT risks by a payment provider. A crowdfunding service provider is in a better position to assess this multitude of individual transactions holistically. Additionally, only the crowdfunding service provider has information about the nature of the project that is being financed and its owner.

Virtual asset providers
 Virtual asset providers pose emerging ML/TF risk and are only partially covered by the directive. The introduction of a regulation provides a possibility to tackle this issue in a unified matter. Therefore, the Netherlands advocates to include virtual asset providers within the scope of the regulation, in line with the FATF-standards.

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. (5000 characters max, including spaces and line breaks)

When a FinTech company mediates in peer-to-peer lending it does not fall within the EU framework. Since peer-to-peer could be used as a means to launder money, this is a risk.

The Commission had 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		
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	X		
Deposit Guarantee Schemes Directive (Directive 2014/49/EU): customer assessment prior to pay-out	X		

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		
Categories of payment service providers subject to anti-money laundering rules	X		
Integration of strict anti-money laundering requirements in fit&proper test	X		

Are there other EU rules that should be aligned with anti-money laundering / countering the financing of terrorism rules? (5000 characters max, including spaces and line breaks)

More clarity on the intercommunication between the GDPR and other specific legislation regarding the sharing of data and the tipping-off ban, and the AML/CFT-framework would be welcome. As mentioned above, the sharing of data can be a useful tool for obliged entities to fulfil their role as gatekeepers. More clarity on the data that can be shared between obliged entities, in line with the GDPR and the tipping-off ban, would be welcome. The Netherlands is also in favour of more EU guidance and sharing of good practices regarding national public-private partnerships.

Additional comments (5000 characters max, including spaces and line breaks)

Comments regarding chart

Fit and proper test

With the further integration of strict AML-requirements in the fit and proper test, as a result of the amendments of Article 91 CRD with the introduction of CRD V, competent authorities will be specifically required to verify whether the "fit and proper requirements" are still fulfilled if there are reasonable grounds for suspicions of ML/TF, or if there is an increased risk thereof in connection with an institution (credit institution). With regard to this final part, further guidance might be welcome. Although it is crucial to verify whether the members of the management body of a financial institution have sufficient knowledge and skills to assess ML/TF risks and to mitigate these risks, the level of these risks is dependent on a broad range of factors, not only the sufficient knowledge and skills of the management board. For that reason, further guidance might be welcome on the occasions in which increased ML/TF risks should lead to a new assessment of the member of the management board.

Legislative amendments with regard to the fit and proper test, specifically in the field of AML/CFT, are not necessary. However, further harmonization (through legislative changes) of the fit and proper test in general could be welcome, especially when it comes to terms and definitions and the timing of the assessment. This should, however, not be a part of the strengthening of the AML/CFT-framework, but of a broader initiative regarding the fit and proper requirements in all relevant directives and regulations for the financial sector.

AMLD also includes fit and proper requirements for persons who hold a management function in certain entities (providers of exchange services between virtual currencies and fiat currencies, custodian wallet providers, currency exchange and cheque cashing offices, trust or company service providers, and providers of gambling services), as well as for persons who are the beneficial owners of such entities. Further guidance would be welcome as to what the assessment of the fitness of the beneficial owners of these entities should entail.

The Bank Recovery and Resolution Directive (BRRD)

We are of the opinion that the interaction between the BRRD and the AML/CFT provisions should be carefully calibrated. We think that license withdrawal due to non-compliance with the AML/CFT rules should not automatically lead to a 'failing or likely to fail' declaration. The withdrawal of a license in this case may have little to do with the financial situation of the institution nor prevent it from liquidating itself in a solvent manner following the withdrawal of

the license. As the application of the resolution tools needs to ensure the institution (or at least the critical functions of it) are continued, the withdrawal of the license solely for AML/CFT reasons would impede the resolution authorities in executing their mandate. Therefore, the withdrawal of the license due to AML/CFT breaches should only lead to a failing or likely to fail declaration if one of the other conditions in Article 32(4) BRRD is also met.

The Deposit Guarantee Scheme Directive (DGSD)

The interaction between the DGSD and the AML/CFT framework would benefit greatly from further enhancement and clarification. Currently, the deposit guarantee scheme (DGS) has not enough powers to counter ML/FT related issues and to ensure that the occurrence of ML/FT in DGS payouts can be prevented. We therefore fully support the EBA's advice and recommendations on this matter, set out in its Opinion on deposit guarantee scheme payouts of October 2019 (more specifically, marginal 71-112).

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
- Financial institutions**
- Credit institutions

What powers should the EU supervisor have?

- 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**

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 decentralized implementation)
- Other

Additional comments (5000 characters max, including spaces and line breaks)

Financial institutions, through a phased approach

Since it suits the risk based approach of the AML/CFT-framework, it is desirable to start off with bringing financial institutions under the supervision of the European AML/CFT-supervisor through a phased approach. In their joint opinion on ML/TF risks affecting the European Union's financial sector dated 4 October 2019 (JC2019 59), the European Supervisory Authorities identified that the sectors most vulnerable to ML/TF are credit institutions, payment institutions, bureaux de change and e-money institutions. As such, it is reasonable to start European AML/CFT supervision with credit institutions and to expand this later on with these other financial institutions. At a further stage high ML/TF risk semi-financial institutions (virtual asset providers and company services providers) could also be brought under the direct supervision of the European AML/CFT supervisor, because of their inherent high ML/TF risk and cross-border character. This phased approach will facilitate an expeditious launch of the European AML/CFT supervisor and prevent it from being overwhelmed at the outset.

Selection through a risk assessment

It is important that the European AML/CFT-supervisor is able to identify the obliged entities that should fall within its direct supervision on the basis of a risk assessment. This is in line with the risk based approach of the AML/CFT-framework and will allow the European AML/CFT supervisor to function independently. Selection of specific high ML/TF risk obliged entities should be proportional and subsidiary and defined by measurable criteria based on data that are available in all EU Member States. It should encompass cross-border activity and specific ML/TF-risks.

Supervisory body

The Netherlands advocates the establishment of a central European AML/CFT supervisor through a new body, since it is the most effective and desirable option for several reasons:

- Since the supervisor will solely be tasked with AML/CFT supervision, it will be able to operate fast and efficiently and in the end state can handle a large amount of supervised obliged entities.
- Since it is 'built from scratch', it can be designed according to its functions. This will include a governance structure that ensures fast and independent decision-making, broad powers vis-a-vis individual institutions.
- No treaty change is needed which makes a relatively fast introduction possible.

Supervision within the EBA is considered less effective, since:

- It would require legislative changes to its governance, tasks, voting structure and powers and would require a complete transformation of the agency;
- The new task of supervision does not fit well in the existing tasks of EBA, *inter alia*, regarding policy making and mediation. Moreover, the EBA is less suitable to extend the scope of European supervision to (certain) semi-financial institutions.

Supervision by the ECB is also not a preferred option, since its scope is limited to prudential supervision on credit institutions in the Eurozone and a treaty change is needed to bring AML/CFT supervision in its scope.

Direct and indirect powers

The central European AML/CFT-supervisor should be given broad powers within the limits set out in the *Meroni* and *Short Selling* cases. It should be able to supervise the financial institutions that fall within its scope, directly. The supervisor should be able to investigate whether high risk financial institutions comply with the applicable AML/CFT provisions (as laid down in the AML Regulation (AMLR), or AMLD). It should have the power to ask information directly from financial institutions and do on-site inspections, as well as impose sanctions on individual high risk financial institutions in case of violation of the AML/CFT provisions. Authorization and withdrawal of authorization should remain a power of the national competent authorities or the ECB. The involvement of national competent authorities in the day-to-day supervision of the European AML/CFT-supervisor on the high risk financial institutions is of great importance.

In order to enhance the uniformity of supervision, the European AML/CFT-supervisor should have indirect supervisory powers in regard to the (semi)financial institutions which are directly supervised by national competent authorities. The supervision on DNFBPs should fully remain with the national competent authorities.

Establishing a coordination and support mechanism for FIU's

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?

- 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 characters max, including spaces and line breaks)

The Netherlands endorses a coordination and support mechanism for EU FIUs. It is important that FIUs are and remain operationally independent and autonomous. In this context, the Dutch government emphasizes that the envisaged mechanism should further support the activities of FIUs, and not replace them. Non-legally binding EU improvements to further enhance the cooperation between EU FIUs are applauded. A formal network of FIUs would be a possible solution to achieve this purpose, depending on the exact composition and governance of such a network. Remodelling and robustly strengthening the already existing FIUs Platform might also be a possible solution. In general, the EU FIUs should have a great / enhanced and clearly defined involvement in this matter. Particularly regarding the hosting of FIU.net, legally and technically sound rules are needed.

Enforcement of EU criminal law provisions and information exchange

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

- 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 characters max, including spaces and line breaks)

In general, public-private partnerships can enhance the prevention and combat of ML/TF greatly. One of the main pillars of the AML/CFT-framework is the risk based approach. Gatekeepers need to have policies and measures directed at the highest ML/TF risks. For this they need to gather information. Analyses like the SNRA and the NRA are important. At the same time public authorities have more detailed and current information which can help specific gatekeepers in their tasks. Vice versa, gatekeepers have information on subjects which can help law enforcement authorities.

Access to current information is important for public and private partners. Especially in an area where criminals change their methods to hide their activities. The Netherlands firmly believes that public-private partnerships play a crucial role to strengthen the effectiveness of the AML/CFT-framework. The Netherlands underlines that any sharing of data needs to be within the boundaries of the law. It is therefore important to give guidance at the EU-level on the possibilities, boundaries and safeguards to share data.

In regard to FIUs specifically, taking into account the comments in the previous part of this consultation, the Dutch government is in favour of issuing guidance, rather than specific rules, on the obligation for FIUs to provide feedback to obliged entities.

Strengthening the EU's global role

How effective are the following actions to raise the EU's global role in fighting money laundering and terrorist financing?

	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				X		
Push for FATF standards to align to EU ones whenever the EU is more advanced (e.g. information on beneficial ownership)		X				

Additional comments (5000 characters max, including spaces and line breaks)

The Netherlands considers increased coordination between the European Commission and the Member States an important tool in raising the EU's global influence, in particular in fora such as the FATF. Before taking a final position, the Netherlands seeks further clarification from the European Commission on its proposal to possibly represent the Union as a whole in the FATF. A crucial element of any changes to be considered should be that existing FATF Member States, such as the Netherlands, can retain full membership of the FATF.