



Comments on EC Roadmap: Towards a new comprehensive approach to preventing and combating money laundering and terrorism financing

10 MARCH 2020

We welcome the opportunity as a loose coalition of non-profit organisations to share some initial comments and reflections on the European Commission Roadmap towards a new European policy on preventing and combating money laundering and terrorism financing as follows:

Overall comments on the roadmap approach

Introduction

We take note that the 2020 European [Commission's Work Programme](#) announced that in order "to ensure the integrity of the European financial system and reduce the risks of instability, a new Action Plan on Anti-Money Laundering will seek to improve the supervisory system and improve the enforcement of the rules". On 5th December 2019, the Council had already adopted [conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism](#). The conclusions followed the [EU strategic agenda for 2019-2024](#) where the European Council called for "strengthening the fight against terrorism and cross-border crime, improving cooperation and information-sharing and further developing common instruments." The conclusions recognised recent legal enhancements to the AML regulatory framework¹ as well as efforts made by the Member States in order to strengthen the AML framework.² The Council built its December conclusions also on the Commission's July 2019 communication [Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework](#) accompanied by four reports, in which the Commission referred to inadequate implementation and application of the relevant framework, particularly in relation to cross-border cooperation and coordination. The December's Council conclusions reflected also the European Parliament's [resolution on the state of implementation of the Union's anti-money laundering legislation](#).

In the context of identified shortcomings, as a next step the Council invited the Commission to explore possible further actions to enhance the existing AML rules, in particular by considering:

- the possibility of creating a **coordination and support mechanism** that encourages and facilitates the cross-border work of Financial Intelligence Units, including through enhancing strategic cooperation and promoting joint analyses,

¹ The implementation of the 5th revision of the AML directive, adopted in May 2018, the new capital requirements directive for banks (CRD5), adopted in May 2019, as well as the review of the functioning of the European Supervisory Authorities, adopted on 2 December, with a view to strengthen the rules on tackling money laundering and terrorist financing.

² Anti-Money Laundering Action Plan - Council Conclusions (4 December 2018), <https://www.consilium.europa.eu/media/37283/st15164-en18.pdf>



- whether some aspects could be better addressed through a **Regulation**, and by exploring the opportunities and challenges in using technological innovation in combatting money laundering and countering the financing of terrorism, as the current Directive-based approach that relies on a minimum harmonisation legal framework and implementation of EU rules at national level,
- the possibilities, advantages and disadvantages of conferring certain responsibilities and powers for anti-money laundering **supervision to an EU body** with an independent structure and direct powers.

It is now expected that the EC will in the Communication following this consultation, present its views on the AML-CFT policy framework and announce further steps to be taken.

Our comments

In this context we would like to:

- call on the EC that any new policy proposals should be prepared in wide consultation with all relevant stakeholders, including Not for Profit Organisations and the philanthropy sector. It is also of crucial importance that any new policy options would follow the full procedure laid down in [Better Regulation](#) rules, including the appropriate impact assessment.
- welcome an opportunity to meet in person with the representatives of the European Commission, particularly with the DG FISMA, which is taking the lead on developing the policy communication to further discuss the issues raised.
- facilitate cross sectoral discussions and engagement with national regulators so as to better identify and address shortcomings
- stress that while we support the important fight against money laundering and terrorism financing, we are of the opinion that based on international standards, any new EU level policy must follow **a risk-based and proportionate approach**³, taking into account the latest findings from the EU SNRA, **fundamental rights and the principle of subsidiarity**.

Avoid chilling effect on legitimate non-profit organisations

We are worried that some policies concerning combating money laundering and terrorism financing have already had a chilling effect on legitimate philanthropic and other public benefit/non-profit organisations, be they legally organised as foundations, associations, limited liability companies or other forms (Not for Profit Organisations). Some countries have “over-implemented” the 4/5th EU Money laundering Directive by including all **Not for Profit Organisations as obliged entities** (which is

³ See also recent EESC philanthropy opinion asking that national and EU security measures are risk-based, proportionate and evidence-based: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-philanthropy-untapped-potential-exploratory-opinion-request-romanian-presidency>



not required by the Directive) and hence put them under burdensome strict reporting requirements, without clearly identified risks. In addition, the wording of the 4/5th Money Laundering Directive requires decision makers/those in control of public benefit foundations to be listed as beneficial owners, a term which is not always correctly understood at a national level as it gives the impression that board members would own or benefit personally from the organisation. The wording “beneficial owner”, along with the privacy and data concerns, has made it less attractive for individuals to take on such board positions.

Take risk based approach

Assessments reduce risk related to the NPO sector

The latest analyses at national and EU level show, the overall AML and CFT risk related to public benefit organisations has been reduced. The last EC’s Supranational Risk Assessment (SNRA) [report](#), overall lowered the risk assessment related to NPOs/ philanthropy. This assessment also corresponds to a series of country level evaluations done by FATF (e.g. UK, Belgium, Norway, Spain, Latvia, Slovenia and Sweden). From the data in the FATF national evaluations of past years, the national risk assessments appear to suggest a lower risk for the entire non-profit sector.

Risk mitigation measures in place

EU and national level assessments revealed that those Not for Profit Organisations which are considered more exposed to risks (service delivering NPOs, larger organisations with international outreach, humanitarian, etc.) are regularly under tighter obligations and are more frequently checked by supervising authorities, tax authorities, banks (obliged entities), public and private donors and auditors.

These Not for Profit Organisations have also in many cases adopted mitigating measures, including self-regulation or internal systems of checks in place, sector-initiated codes of conduct developed by the fundraising as well as the wider philanthropic sectors, which often include guidance on governance, reporting, monitoring of the use of funds, as well as knowing your donors and knowing your beneficiaries. Public donors also put reporting requirements in place.

Overall, there is a strong self-interest of non-profit organisations to act professionally, to be transparent and accountable and to ensure that no abuse takes place. We would also like to recall that Not for Profit Organisations including philanthropic organisations, are in general not those legal entities engaging in activities, which are particularly likely to be used for money laundering or terrorist financing.



Taking into account fundamental rights

While considering different policy options, we recall that the European Commission should carefully assess and weigh in the fundamental rights component. According to the 2018 EU Agency for Fundamental Rights (FRA)'s report, the rights to freedom of association, freedom of peaceful assembly (Article 12 of the EU Charter of Fundamental Rights), and freedom of expression and information (Article 11 of the Charter) are of particular importance in this context. The FRA particularly points out that adoption of legislative or administrative measures in the area of tax law, or with respect to transparency, electoral, and lobbying laws of might affect civil society organisations, even without an initial intention to do so. In other words, **even if not meant to negatively affect NPOs, such measures can have an undue impact on them and hence have a chilling effect.** The FRA reiterates that this is relevant also where Member States are transposing and implementing EU legislation – for instance, in the area of border controls, counter-terrorism or anti-money laundering.⁴ Particular attention should also be paid to the protection of privacy enshrined in Article 8 of the Charter, namely when it comes to Beneficial Ownership (BO) registers and what type of information is collected and accessible to the public. The implementation of the Anti-Money laundering Directive revealed that it is important to clarify how the BO information is collected and stored and how existing registers or storage of information could be used in this context to avoid unnecessary administration.

Any new EU policy proposals should hence always take into consideration **what rights and fundamental freedoms are at stake and balance them against the public interest, while conducting thorough impact assessments, including [fundamental rights check lists](#).** We as a sector are at your disposal to assess and discuss current and future policy approaches in this regard and provide additional resources, evidence, and background for effective policy-making.

Take a proportionate approach

Better guidance to ensure consistent and appropriate implementation of existing policy

We share the concern that the national implementation of the 4/5th AMLD has not been consistent and have called for more EU-level guidance in this regard in the past. The AML/CFT framework should be implemented consistently and effectively across the European Union, while **employing a risk-based approach towards the NPO sector, without imposing general measures that may restrict or hamper the public benefit activities of organisations within the EU or beyond.** We consider that clear guidance from the EU level could facilitate a more consistent implementation at national level.

⁴ EU Agency for Fundamental Rights, Challenges facing EU civil society organisations working on human rights in the EU, 2017, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf



Necessity and proportionality of future policy

Increasing evidence and the outcomes of the National and Supranational Risk Assessments shows that the risk related to the Not for Profit Organisations is lower than in previous years. Any future policy options chosen by the European Commission should observe the essential principles of risk – based approach and proportionality.