

## EC ROADMAP

### Action plan on anti-money laundering

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### AMAFI's feedback

AMAFI welcomes the opportunity to give feedback on the Commission's Roadmap regarding its action plan on anti-money laundering and countering financing of terrorism ("AML/CFT") and supports the EU's ambition on this topic<sup>1</sup>.

Nowadays, regarding the importance taken by AML/CFT issues, investment firms are legitimately subject to many requirements on this topic. Those are time and resource consuming at a time when the financial sector faces numerous challenges notably in terms of regulation. In that context, the implementation of the risk-based approach is particularly important as it allows actors to concentrate their resources where their analysis shows that they are especially necessary, which enables to be more effective and efficient.

In light of the significance of AML/CFT issues for its members, AMAFI set up a dedicated working group few years ago in order to help them better understand developments taking place at international, European and national levels as well as to implement various pieces of legislations. In particular, this working group has recently focused its work on the transposition of the 5<sup>th</sup> Directive<sup>2</sup> and the specificities of financial markets. Thus, AMAFI is keen to contribute to the European Commission ("EC") ongoing reflections in highlighting what it considers as particularly important to improve the existing European framework on AML/CFT, notably taking into account the necessity for regulated entities to allocate their resources more efficiently.

#### AMAFI proposals

- (1) Considering an EU AML/CFT Regulation for bigger harmonisation.
- (2) Considering a suitable Authority to entrust with European AML/CFT supervisory competencies.
- (3) Better reflect financial markets specificities.
- (4) Delivering promptly the consolidated EU beneficial ownership register.
- (5) Creating a consolidated European central register of named Political Exposed Persons (PEP).
- (6) Considering establishing a "whitelist" of low-risk third countries at European level.

<sup>1</sup> "You will put forward a new, comprehensive approach to fighting money laundering and the financing of terrorist activities. This should focus on better enforcement of legislation, better supervision, adapting to risks linked to new technologies and a stronger role in setting international standards." ([Mission letter of Valdis Dombrovskis, 10 September 2019](#))

<sup>2</sup> [Directive \(EU\) 2018/843](#) of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

- **Considering an EU AML/CFT Regulation for bigger harmonisation**

AMAFI agrees with the EC's observation on the need to enhance the actual EU legal framework<sup>3</sup> as the minimum harmonisation approach adopted by the EU resulted as a matter of fact in 28 different national frameworks. To address this point, AMAFI considers the elaboration of a Regulation to cover AML/CFT threats and vulnerabilities would play a central role in further harmonisation. AMAFI believes the following requirements should, at least, be enforced through a Regulation with regards to:

- (i) customers' due diligences, notably the ones concerning legal persons (for example, only some countries require to obtain elements to understand the clients' activities) and
- (ii) enhanced due diligence measures to be implemented by obliged entities on business relationships or transactions linked to high risk third countries.

Moreover, it should be noted that such Regulation should be specified by Level 2 texts to be operationally efficient and avoid measures taken at national level to decline principles foreseen in Level 1 text.

- **Considering a suitable Authority to entrust with European AML/CFT supervisory competencies**

In order to ensure an efficient European supervision of AML/CFT, AMAFI considers there are two options to explore: either reinforce the EBA which has already seen its powers increased or create an *ad hoc* Authority. To select the best solution, in AMAFI's point of view and considering recent AML/CFT issues, it is necessary to take duly into account the capacity of the Authority to be operational and effective in a very short time frame.

In any case, the designated or newly established European Authority should not replace national regulators that are supposed to have the deepest knowledge of their national specificities.

Nevertheless, to be efficient, the chosen Authority should have sufficient resources to allow it not to focus solely on the banking sector but also to acquire enough expertise in other fields, notably with regards to financial markets' specificities and challenges (this Authority should also set up close cooperation with the ESMA).

- **Better reflect financial markets specificities**

The EU AML/CFT framework focuses on retail banking and is not sufficiently adapted to specificities of other financial sectors, especially to those of financial markets. This results in a difficulty to apply some of EU requirements for those actors.

For example, the EU AML/CFT Directive only focuses on the notion of "business relationship" which refers to relationship with clients (and eventually with their beneficial owners) but within the financial markets some relationships do not fall within the scope of this specific "client relationship" (such as the different members of a syndicate). Thus, it will be useful if the EC decides to introduce another type of "business relationship" such as one with "associated person" on which some (but not all) due diligence should be carried on.

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<sup>3</sup> European Commission Action plan on Money laundering & terrorism financing – Roadmap ([Ares\(2020\)910750](#)).

- **Delivering promptly the consolidated EU beneficial ownership register**

Furthermore, in AMAFI's view, a prompt delivery of the consolidated beneficial ownership register gathering the information hold on the 28 different central national registers would considerably facilitate the application of customer due diligence measures. Indeed, as of now, as soon as they have European relationship (which is the case of investment firms), financial entities should require access to all those registers which are not as easily accessible as the French register. Actually, a European register will allow regulated entities to allocate their resources more efficiently.

- **Creating a consolidated European central register of named Political Exposed Persons**

In the same way, AMAFI considers that a European register of PEP containing nominative information should be created and fulfilled by each Member State.

Indeed, even if the European definition of PEP has already been unified in the 4<sup>th</sup> Directive, it still leaves Member States some room for adaptation according to their specificities as functions involved within the European definition of PEP defer from one Member State to another. Consequently, creating a European nominative register of PEP<sup>4</sup> would facilitate the identification of PEP by regulated entities.

Thus, this creation will allow regulated entities to allocate their resources more efficiently.

- **Considering establishing a “whitelist” of low-risk third countries at European level**

In order to facilitate business relationships with third countries imposing equivalent requirements and for better efficiency of EU AML/CFT framework, it would be welcomed if the EU was considering establishing a list of third countries which impose equivalent requirements to those laid down in the EU AML/CFT framework.

This identification would enable to apply simplified due diligence to business relationships located in those countries and thus, to have a better allocation of resources to deal with riskier business relationships. This possibility is allowed by the FATF Recommendations<sup>5</sup>.

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*Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 150 members operating for their own account or for clients in equities, fixed-income products and derivatives. Nearly one third of its members are subsidiaries or branches of non-French institutions.*



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<sup>4</sup> It should be noted that some Member States have already structured their own central register (e.g. Italy) which should serve the EC usefully as examples to improve.

<sup>5</sup> As mentioned in the Interpretative Note of the FATF Recommendation 10 ([FATF Recommendation 2012](#)).