

Insurance Europe key messages on the review of the AML Directive

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■ General remarks

Insurance Europe has reviewed the European Parliament's (EP) [report and legislative resolution](#) of 11 March 2014 on the directive on "the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th anti-money laundering directive¹)", and would like to share some remaining key concerns in view of the ongoing discussion on the adoption of the directive in the Council of the European Union.

Insurers are fully committed to contributing to the fight against terrorism financing and money-laundering, even though insurance is a relatively low-risk industry in this area.

Insurance Europe is supportive of the prominent role predicted for the risk-based approach (RBA) in the Commission's proposal. It therefore welcomes the strengthening of this principle in the EP resolution. This essential approach will allow insurers to allocate their resources in the most effective way by addressing identified and prioritised risks in the right order and with the most appropriate response.

Insurance Europe also strongly supports the parliament's efforts to establish a central government registry for beneficial owners of companies in Europe. This registry will enable obliged entities, including insurers, to identify and verify the beneficial owners in the context of the fight against money-laundering in a time- and cost-efficient way.

Following the adoption of the EP resolution on the review of the AML Directive on 11 March, Insurance Europe believes the following areas still require careful consideration to ensure that an effective and workable AML regime is maintained in Europe:

- It must be ensured that obliged entities can continue making use of simplified customer due diligence measures. To this end, article 13 § 2 should be removed from the text.
- Contrary to the view of the EP, the use of commercial "politically exposed persons, (PEP)" lists must be allowed if such lists cannot be provided by non-commercial instances. Insurance Europe also

¹ COM/2013/045 final - 2013/0025 (COD)

believes that PEPs should not automatically be considered as high risk in the context of money laundering.

- Inconsistencies regarding non-criminal activities must be clarified, and undue references to tax avoidance, aggressive tax planning and country-by-country-reporting must be removed. In addition, consistency of tax offence definitions must be ensured.
- The suggested obligation for insurance companies and other obliged entities to perform customer due diligence measures whenever a company is established, even without any intention of establishing a business relationship with this entity, must be removed.
- Consistency in wording between definitions and articles must be ensured throughout the text.
- A clear definition of a life insurance beneficiary in the text of the directive should be included.

These comments are elaborated further below.

■ Simplified Customer Due Diligence (CDD) Measures

Insurance Europe is supportive of the prominent role predicted for the risk-based approach (RBA). However, this principle can only be effective if the insurance companies' resources target the areas that present a meaningful risk.

Insurance Europe would like to highlight that in an insurance context, it should be allowed to apply simplified CDD measures in all cases where national or internal risk assessments show, for certain life insurance products or product characteristics, that there is low or no money laundering risk. Insurance Europe is therefore concerned that the wording of the Commission proposal would imply that simplified CDD measures could only be applied on a case-by-case basis, always taking into account the customer relationship or the transaction in the risk assessment.

Such an approach is not consistent with the fact that certain products, such as pure life insurance products with a single premium below a certain threshold, are *de facto* not used for money laundering purposes. For such products, it should be possible for insurers to apply simplified CDD measures without having to perform unnecessary checks on the customer relationship or transactions.

Insurance Europe would like to note that checking the customer relationship and transaction is required under normal CDD measures. As such, the non-removal of article 13 § 2 would result in insurance companies always having to perform normal CDD measures and concluding - on the basis of these measures - that these checks were not necessary. This is not in line with the RBA and would add considerable burden onto insurance companies with no particular benefit in terms of fighting money laundering. The application of article 13 § 2 would result in simplified CDD ceasing to exist.

■ Politically Exposed Persons (PEPs)

Identification and verification

Insurance Europe supports the development of lists or registries to identify and verify "PEPs". Obligated entities should receive assistance in identifying politically exposed persons by those authorities possessing the necessary information. This information should be made accessible to obliged entities.

The EP suggested the Commission to provide such a list in cooperation with member states and international organisations for domestic PEPs. However, this implies that obliged entities, including insurers, can continue to make use of commercial PEP-lists for the identification and verification process of foreign PEPs. We therefore call for clarification that if no non-commercial lists can be provided to obliged entities, be they domestic or foreign; the use of commercial list should not be explicitly prevented.

Risk categorisation

Insurance Europe strongly believes that application of the RBA should be consistent. All money-laundering and terrorist financing risks should be assessed on their own set of circumstances and money laundering risks. Insurance Europe stresses that the RBA should equally be applied to PEPs. In practice the fact that someone is a PEP should be included in the risk categorisation as a higher risk, but not predetermine the outcome of the risk categorisation, as not all PEPs are exposed to high risks. For example, PEPs buying products with a low risk of being used for money laundering and/or with a low premium should not automatically be subject to enhanced due diligence measures. Applying such a RBA on the PEPs will result in a high cost-efficiency ratio.

Currently the RBA applies to domestic PEPs but not to foreign PEPs in the FATF recommendations. Therefore, Insurance Europe has welcomed the removal of the residence criteria in the Commission's proposal, thereby considering all PEPs in the EU as domestic. It believes, however, that a RBA should be applied to all PEPs, be they domestic or foreign.

■ Tax avoidance, aggressive tax planning, and country-by-country-reporting (CBCR)

Insurance Europe does not oppose the inclusion of *tax crimes* as a predicate offence for money laundering, in line with the financial action task force (FATF) recommendations. Specifically, according to the Commission proposal and FATF recommendations, insurers are required to report any transactions related to the laundering of the proceeds of tax crimes as suspicious transactions

Tax avoidance and tax planning

However, the inclusion of tax avoidance and aggressive tax planning, as suggested by the European Parliament, are unclear and could lead to confusion on the scope of the directive. Whereas tax evasion is a criminal offence, tax avoidance and aggressive tax planning describe legal actions and should not be addressed in a directive targeting criminal offences.

Insurance Europe believes that the political decision whether and how legal transactions will be evaluated for tax purposes has to be restricted to legal initiative of the European Commission on its own. We therefore strongly suggest that non-criminal tax references are not included in the AML directive.

Tax offences and tax crimes

Insurance Europe would also like to highlight the fact that 'tax offences' and 'tax crimes' have different meanings. The EP resolution uses both terms interchangeably. Consistency in the choice of wording and appropriate reference to the definition in Article 3 would overcome unnecessary confusion and misinterpretation.

Country-by-country-reporting

Furthermore, public disclosure of certain financial information by large companies operating in the EU, under the country-by-country-reporting (CBCR) provisions, is not appropriate, as it is not linked to money laundering. The EP and European Council (EC), on 26 February 2014, agreed on a political compromise regarding the directive on non-financial disclosures, under which the Article 48 of the new accounting directive 2013/34/EU will be amended to mandate the EC to holistically review the possible extension of CBCR until 21 July 2018². The EP approved the agreement on 15 April 2014³. Any outcome of such a review should not be anticipated, specifically as the EC's report will need to take into account developments on CBCR in the organisation for economic co-operation and development's (OECD) project on base erosion and profit shifting (BEPS). For these reasons, Insurance Europe requests to remove any CBCR references from the 4th AML directive.

² <http://gr2014.eu/sites/default/files/Hatzidakis%20COREPER.pdf>

³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0368#BKMD-69>

■ Customer Due Diligence (CDD) on newly established businesses

Insurance Europe believes that obliged entities should not perform customer due diligence on new businesses, as suggested in the EP resolution (Amendment 74 – Article 10). Performing customer due diligence on newly founded companies should only be conducted when establishing a business relationship as per Article 10 (a) of the EC’s proposal.

Maintaining this reference means that whenever a company is established anywhere in Europe, all obliged entities, be they banks, insurers, lawyers or accountants should perform CDD measures on that company. Such an obligation would be highly disproportionate and would place an enormous burden on obliged entities without added value in relation to fighting money-laundering.

Insurance Europe therefore calls on member states to oppose amendment 74 of the EP resolution.

■ Inconsistency in wording between articles and definitions

Insurance Europe is supportive of amendment 87 of the EP resolution underlining that the identification of natural persons for the purpose of this directive should be based on evidence rather than an assumption. Such an approach will provide for broader legal clarity.

However, this wording was included in article 21 in the EP resolution, but was not adopted in the definition as per the EC’s proposal.

Insurance Europe suggests to replace “known to be” in article 3 (7) with “as evidence indicated”, or at least to ensure that there is consistency in the wording used in both the definition and the article.

■ Life insurance beneficiaries

The insurance sector is a distinct business with its own risk profile. Therefore, Insurance Europe welcomes the efforts to properly tailor the proposal to these distinct features, such as the recognition that some terms have a different meaning in insurance and that the requirements should be different.

In this respect Insurance Europe particularly welcomes the definition of a non-face-to-face business relationship and the fact that the designated beneficiary in a life insurance context only plays a role if the insured event occurs.

In this regard, Insurance Europe believes it is necessary to define a beneficiary of a life insurance policy in the context of the AML directive to avoid misinterpretation. Insurance Europe suggests the definition used in the FATF Recommendations of February 2012⁴:

“In the context of life insurance or another investment linked insurance policy, a beneficiary is the natural or legal person, or a legal arrangement, or category of persons, who will be paid the policy proceeds when/if an insured event occurs, which is covered by the policy.”

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⁴ http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf