Position paper on EC Anti-Money Laundering Package

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Introduction

Insurance Europe fully supports the efforts to strengthen the EU's framework for anti-money laundering and countering terrorism financing (AML/CFT). For this framework to work in practice, it is essential for the risk-based approach (RBA) to remain the guiding principle to ensure AML/CFT resources are allocated where they are needed. From an insurance perspective, applying the RBA to the whole framework should reflect the very low risk of money laundering/terrorism financing (ML/TF) in the life insurance sector as a whole, and which is close to non-existent for 'pure risk' life insurance products. It also means keeping non-life insurance firmly out of scope at EU level.

Messages on the AML Authority (AMLA)

Insurance Europe welcomes the creation of a new AML Authority to coordinate national supervisory authorities (NSAs) and to ensure EU AML/CFT rules are applied consistently by the private sector across the EU. This innovation is particularly understandable given the nature of recent AML scandals in the banking sector. However, the AMLA's powers should be better defined from the outset.

- More detail needed in the Regulation

As a general observation, too many issues of key importance are left for the European Commission to decide (in the Delegated Act, regarding funding etc) or even for the AMLA itself (through Regulatory Technical Standards (RTS), on group-wide compliance in particular). Given the significance of this proposal, Insurance Europe calls for more detail to be provided at level 1 (the Regulation itself): this will provide obliged entities (OEs) with more clarity as to what to expect once the AMLA is set up, and it will also ensure more scrutiny around the rules deciding its functioning.

- The AMLA should not undermine NSAs

Despite the creation of the AMLA, NSAs should remain the main point of reference for all OEs. They are bound to have a better understanding of their home market and the OEs operating therein. Their authority should therefore not be undermined in any way by the AMLA, with its focus being instead on coordination with the NSAs and consistency in the way they implement EU AML/CFT rules.

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- The AMLA's direct supervisory powers should be better framed

The Commission's proposal envisages significant direct supervisory powers for the AMLA over OEs otherwise under the jurisdiction of NSAs. It is therefore essential for those direct supervisory powers to be justified and adequately framed to preserve NSAs' credibility. Yet, as already observed, the proposal leaves several key questions to be decided at a later stage and at a different legislative level.

- The scope rules should be defined in the Regulation

The crucial question of which OEs will fall within the scope of these direct powers is left open and to be decided in level 2 legislation, where there is far more leeway for the Commission. While the actual list of OEs may indeed need to be set this way, as it can evolve over time, at the very least the rules to determine the OEs falling within this scope should be detailed exhaustively in the Regulation rather than in a Delegated Act.

- Insurers should be excluded from this scope

Applying the RBA at the institutional level should then lead to excluding insurance companies from the scope of these supervisory powers. This is because even where there is significant cross-border activity, the risk of money laundering/terrorism financing (ML/TF) through the life insurance business would never be high enough to warrant such an extraordinary step. This is consistent with the supranational risk assessments carried out every two years by the Commission itself.

In any event, the list of OEs under such direct EU-level AML supervision should be strictly limited to those presenting the highest risk. This list should not penalise businesses operating mainly through FOS/FOE and/or discourage them from using the single market's opportunities.

Once the list of OEs is established, the fees needed to fund the AMLA should only be imposed on those selected OEs.

- The EBA's powers should be limited during the transitional period

The Regulation is silent on the European Banking Authority (EBA)'s role during the transitional period. The EBA's AML/CFT mandate is expected be repealed in favour of the AMLA, but there should also be clarity as to the validity of the various guidelines already published by the EBA, and those that may be adopted during the transitional period. While there should not be any vacancy in EU-level AML supervision, there should be some commitment from the EBA to limit its supervisory work to what is strictly necessary until the AMLA is established and takes over these functions.

Messages on AML Regulation

The RBA is the backbone of the EU (and even global) regulatory framework for AML/CFT, and this principle should not be undermined in any way. In this respect, Directives are legal instruments generally better suited to the RBA, since they allow a better adaptation to local conditions. Whilst Insurance Europe takes note of the issues created by differing implementation approaches of the AMLD in various markets, extra care should go into ensuring the switch to a Regulation does not undermine the RBA in any way, and still allows for the adaptation of AML/CFT rules to maximise their efficiency.

Insurance Europe understands the harmonisation of AML/CFT rules across the EU not only aims to ensure a more consistent approach across member states (therefore acting as the logical counterpart to the creation of the AMLA) but should also result in facilitating compliance for operators subject to AML/CFT rules (especially those

acting cross-border) through this more coherent framework. It is therefore essential for co-legislators to ensure the provisions found in the Regulation do not in practice achieve the opposite. As it currently stands, the proposed Regulation is not well suited to the reality of life insurance and would not improve AML/CFT compliance.

- The new definition for insurers is problematic

Whilst Insurance Europe welcomes the fact that the scope of the EU AML/CFT framework was left seemingly unchanged as far as insurance is concerned, including the fact that insurance intermediaries remain out of scope, there are serious concerns about the way the definition for insurers under **Article 2 (6)** now includes insurance holding companies and mixed activity insurance holding companies as OEs.

While it is noted that this is only "*insofar as they carry out life insurance or investment-related assurance activities*", there are concerns this could lead indirectly to a significant scope extension. Indeed, some holding companies do not carry any life insurance activity themselves while holding life insurance companies: requiring them to also apply the AML regime would not add any value in terms of AML/CFT and in fact go against the RBA, by diverting AML/CFT resources away from areas where they are more needed.

Parent undertakings will be required to ensure the application of group-wide policies, controls and procedures under Article 13 in any case ("group-wide requirements"). It is therefore not necessary to extend the scope of OEs to insurance holding companies that do not operate as life insurance undertakings themselves.

Clarification is also needed as to which activities qualify for investment related assurance as the term is not defined under Solvency II. Moreover, to be consistent with the RBA, the scope of application should refer to "insurance-based investment products" (IBIPs) as defined under Regulation (EU) No 1286/2014 (PRIIPs) (articles 2.2 and 4 (2)), ie "an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations". IORPs are not currently in the scope of EU AML/CFT rules and, to be consistent, life insurers' activities should therefore be excluded to the extent they perform the same activities as IORPs, hence leaving occupational pension out of scope altogether.

The wording of **Article 3 (3) k)** could also be clarified, so it is clear it does not cover *any* insurer (rather than just the insurers covered in Article 2 (6): ie life insurers). Indeed, it is essential to ensure that the proposed Regulation's wording does not allow any extension of the AML/CFT rules' scope at EU level "through the backdoor".

- Some new rules on internal procedures, risk assessment and staff are not helpful

Internal procedures must be understood in a holistic manner, with existing AML/CFT internal controls already part of a wider risk management framework (Solvency II, currently itself up for revision).

Article 9 requires OEs to appoint a member of the management body as compliance manager on the one hand, responsible for the implementation of AML/CFT regulations in the company and reporting to the entire management board, and a compliance officer on the other, for the day-to-day business (and suspicious activity reports in particular). The division of operational tasks and reporting duties between two different persons is not necessarily welcome in all cases, as it can make direct communication between the operational AML/CFT officer and the entire board of management more difficult. Insurance Europe therefore calls on co-legislators to maintain the flexibility allowed by the existing regime in this respect.

Moreover, corporate governance models differ between member states, distributing responsibility between members of the board of directors may or may not be possible. The proposal should therefore make it clear that

a member of the management body does not in all cases need to be a member of the board of directors but can also include senior management.

Article 11 requires each employee with AML/CFT duties to be subject to an assessment approved by the compliance officer, and to inform them of any private or professional relationship with a customer (in which case they are not permitted to carry these duties in relation to said customer). These employees should be better defined, as employees in the sales department routinely carry out verifications of the identity of customers. Such a broad understanding of the employees with AML/CFT duties would require the compliance officer to check the suitability of thousands of employees. The employees covered by Article 11 should therefore be limited to employees whose main activity is to check compliance with AML/CFT requirements.

- The harmonised CDD rules are not suited for insurers

  - More detail in the Regulation

Insurance Europe notes that, again, too much is left to be decided at the level 2, which would increase uncertainty for OEs. Moreover, the AMLA is to adopt RTS adding to the provisions on identification and verification of the customer's identity and on the identification of the purpose and intended nature of a business relationship. This adds even more uncertainty for OEs already preparing for the Regulation's implementation.

While adding more depth and detail to customer due diligence requirements (CDD) is necessary to a certain extent to improve efficiency and cross-border consistency, the level of detail must not undermine the discretion of OEs and NSAs to settle on proportionate solutions, especially in relation to lower-risk activities, such as insurance. There are strong concerns about the AMLA's power to adopt RTS on the standard datasets for identifying natural and legal persons, including simplified due diligence (SDD) measures.

  - SDD as the rule for insurers

SDD should be the rule for a sector representing as low a risk as life insurance, or at least 'pure risk' life insurance. The proposed scope under the Regulation is simply too narrow. For example, information such as "profession" or "registered residence" should not be necessary, when the information contained in a personal ID is sufficient for the purpose of life insurance.

By detailing the measures required for SDD, **Article 27** effectively narrows down the scope of SDD compared to what is required by the current AML Directive's Article 15.1 and the FATF Recommendation 10, which are both open-ended. Article 27.1 contains a "closed list" which can only be added to by the AMLA through regulatory standards. This is not consistent with the RBA, the very reason for SDD.

  - Terminating the business relationship

Article 17 requires an OE to terminate a busines relationship where it is unable to comply with the Regulation's CDD measures. However, insurance contract law, as well as fiscal law, prevents insurers from unilaterally terminating business relationships in that way. Furthermore, terminating a business relationship usually obliges the insurer to refund the funds. Not only would the authorities not be able to seize these funds of possibly criminal origin, but assuming they are then placed with another financial institution, it would then make it even harder to establish the criminal origin. The refund would in fact create the illusion that it is a legitimate pay out of an insurance contract. While a similar rule existed under the AMLD regime, the fact that it now is a Regulation prevents exceptions providing for the specificities of the insurance regime. The Regulation proposal should therefore be qualified to allow for this scenario (eg "terminating the business relationship as soon as possible").

- Evidence of customers' activity

Article 18 covers customer identification and verification of identify but needs to be further clarified. The proposal requires the customer to provide evidence of the activity carried out (eg annual financial statements). However, in practice, customers are often unable to provide such evidence: eg the company was newly established or is a special purpose entity. This alone should not trigger a suspicious transaction report. Furthermore, information such as a tax number and legal entity identifier or client nationality do not provide any added value in terms of AML/CFT while being an additional burden for OEs. It follows that these requirements seem incompatible with the RBA as far as insurance is concerned. It also seems important to ensure that the use of personal data is kept to a minimum, as required by the European Data Protection Board.

- Allow life insurers efforts to <u>focus on the pay-out stage</u>

  - Identification of the purpose and intended nature of a business relationship or occasional transaction

Article 20 is incompatible with the RBA and inadequate for the reality of the insurance business. The RBA means an OE should be able to use its resources as effectively as possible, which implies deciding to collect more or less information depending on the concrete risks at hand. Requiring an insurer to obtain information on the destination of funds before entering into a business relationship is very ineffective:

    - The customer taking out a life insurance contract has the absolute right to determine (and change) the beneficiary of his/her contract throughout the lifetime of the contract.
    - The customer can appoint a generic (group of) beneficiary(/ies), such as his/her children, spouse etc. The actual people the funds of these contract will be destined to will only be determinable and known at the moment of pay-out.
    - The insurer has no way of controlling upfront whether the intention on the destination of the funds, as voiced by a consumer before subscription, is correct and in line with who will really receive the funds at pay-out. Insurance contracts run for a significantly long term. It is and should continue to be perfectly possible for the customer to change his/her mind as to the destination of the contract. Moreover, there is no way that an insurer can verify whether the customer is honest about the destination of the funds before the moment of pay-out.
    - The features of insurance products are often such that it is not necessary from a risk perspective to collect information on the purpose and intended nature of the business relationship on an individual basis. Instead, the purpose and intended nature can be inferred, for instance from the normal use of the product. Yet the proposal seems to allow this to a limited extent only (art. 27 (1) (b)).

  - Ongoing monitoring of the business relationship and monitoring of transactions performed by customers

Article 21 requires the ongoing monitoring of the business relationship to be carried out and up-to-date documents to be requested from customers on a permanent basis (as these may not be over five years old). This is excessive in the case of life insurance policies given their typically very long term. Customers only pay the agreed premium and do not receive any payments from the insurer during the policy term. AML/CFT should be concentrated around the conclusion of the contract and just before the insurance benefit is paid out.

Updating customer information at least every five years as required by **Paragraph 2** is disproportionate in the case of life insurance contracts that can run for decades without any significant change in the contract or the ML/TF-risk it poses. For example, a payment protection insurance contract concluded with a mortgage loan can run for decades without any transaction or change in the contract. These contracts represent a very low risk of ML/TF, as they only pay out in the case of death to cover the outstanding loan to the relevant credit institution. Updating customer information every five years adds no value whatsoever in terms of AML/CFT, while burdening both the insurer and the customer with administrative work, while the customer purchases this type of product for peace of mind and the insurer should focus on other riskier products. Updating customer information for life insurance contracts should therefore be limited to times where a significant modification occurs in the contract.

Paragraph 3 requires that OEs review and update customer information where there is a change in the relevant circumstances of a customer. Insurers can only become aware of a change in the relevant circumstances of a customer if the customer actively informs the insurer of this change, or when the insurer is informed about it by a public authority. The life insurance business is by its nature a long-term business in which contact with the customer is inherently less frequent then in other businesses.

Insurance Europe therefore calls on co-legislators to reword Paragraphs 2 and 3 so as to exempt insurers from the obligations set out therein.

- ID procedure fit for the digital age

It is also important for the rules found in the Regulation to be fit for the digital age: this is particularly true of the rules around identification. The provisions to better frame CDD-requirements in cases where remote customer onboarding is carried out solely refer to the eIDAS Regulation. As customer acceptance of eID is still limited, member states should retain some flexibility and be allowed to adopt other secure, remote or electronic identification processes as currently foreseen under the current regime (Article 13 (1) (a) of the AMLD).

- Align implementation dates

The implementation dates of level 1 and 2 legislation should be aligned as much as possible, to avoid creating legal uncertainty.

Messages on the Sixth AML Directive

- There should be no scope extension through national risk assessments

In line with the objective of a harmonized EU AML/CFT framework and to ensure a level-playing field, any decision to extend the scope of AML/CFT rules should be taken at EU level. The wording in **Article 3 (1)** is therefore counter-productive in this respect.

- Limit the power to delay publication of a decision on a sanction

Under **Article 42 (1)** of the proposed directive, NSAs can delay the publication of an administrative sanction or measure for years. This could mean the sanction is publicised after the relevant company has taken the adequate steps to resolve the problem behind the sanction, and unduly damage its reputation. In such a case, it would in fact be preferable for the NSA to anonymize the sanction or not make it public at all.