Consultation Response

Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022

21 October 2021

Introduction

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Consultation on the Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022 published by HMT.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME[1] is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

We welcome the opportunity to respond to this consultation and have provided our comments to each of the questions below. We would be happy to talk through any aspects of our response with the HMT, if it would be helpful.

Q1 to Q4: 1. What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services? 2. In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs? 3. In your view, what is the impact of such obligations dissuading customers from using these services? Please provide evidence where possible. 4. In your view should AISPs or PISPs be exempt from the regulated sector? Please explain your reasons and provide evidence where possible.	Our Members suggest that AISP/PISP services present relatively low levels of risk of ML/TF. PISPs are considered marginally riskier due to the opportunity to move money quickly using third party access. However, we consider that the fraud risks are greater given that AISPs can be used to identify accounts with high balances (therefore more likely to be subjected to fraud). Similarly, PISPs could potentially allow for PISP to move funds out of such high balance accounts once the SCA details have been obtained. For this reason, we believe that both AISPs and PISPs should be regulated in order to reduce the risk of fraudulent companies setting themselves up as AISP/PISPs.

[1] AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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Q5 to Q8: 5.In your view should BPSPs and TDITPSPs be taken out of scope of the MLRs? Please explain your reasons and provide evidence where possible. 6.In your view, if BPSPs and TDITPSPs were to be taken out of scope of the MLRs, what would the impact be on registered businesses, for example any direct costs? Are there other potential impacts? 7.Would the removal of the obligation for PSPs to register with HMRC for AML supervision, in your view, reduce the cost and administrative burden on both HMRC and registered businesses? 8.In your view, would there be any wider impacts on industry by making these changes?	AFME agrees with the proposed exclusion, given that the ML/FT risks are limited in this case. Payzone is an example of a BPSP, but they are regulated by FCA. One of the risks to consider is that genuine bills are funded by ML cash with the payer rewarded in a different method. We believe that this should be taken into account by the regulator.
Q9 to Q12: 9.In your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR 10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is there ML risk associated with artists and if so, how significant is this risk? Please provide evidence where possible. 10.As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts? 11.In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, in Annex D, adequately cover the intention to clarify the exclusion of artists from the	We agree with the proposed amendment to exclude makers from the scope of regulation when they sell their physical artworks directly or through a limited partnership. We would be interested to know if digital art will include non-fungible tokens (NFTs) within the definition. If so, we welcome clarity on any further AML requirements to which FIs/VASPs would need to adhere too.

definition, where it relates to the sale and purchase of works of art? Please explain your reasons. 12.In your view, should further amendments be considered to bring into scope of the AMP definition those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?	
Q13 to Q18: 13.In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why? 14.In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions? 15.In your view, would allowing AML CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why? 16.Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)? 17.In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider	We would like to know how the FCA will use SAR data, as the consultation paper does not clarify the reasons behind this request. We strongly believe that the private sector should support authorities in tackling financial crime. Therefore, we agree to share such data, on the basis that there will not be any additional administrative burden for the private sector. As an example, we believe that the FCA should have access to current SAR tool at the NCA and should not result in any additional reporting obligations for the private sector. We would like also to highlight that, ultimately, the private sector has an obligation to submit SARs to the NCA, which then has the faculty to share SAR information with the FCA on certain matters of interest to the FCA. However, we believe that the FCA should not use this new proposed power to look at the SARs to gather evidence to support an enforcement investigation, as we believe that this will not be a legitimate purpose. Instead, we suggest that the FCA should help firms to improve their systems and increase effectiveness.

impacts? Please provide evidence where possible. 18.Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.	
Q19 to Q23: 19. In your view, what are the merits of updating the activities that make a relevant person a financial institution, as per Regulation 10 of the MLRs, to align with FSMA? 20. In your view, would aligning the drafting of Regulation 10 of the MLRs with FSMA provide greater clarity in ensuring businesses are aware of whether they should adhere to the requirements of the MLRs? Please provide your reasons. 21. Are you aware of any particular activities that do not have clarity on their inclusion within scope of the regulated sector? 22. In your view, what would be the impact of implementing this amendment on firms and relevant persons, both in terms of direct costs and wider impacts? Please provide evidence where possible. 23. In your view, what would be the impact of implementing this amendment on the FCA, both in terms of direct costs and wider impacts? Please provide evidence where possible.	Considering that this proposal is going to clarify the scope of MLRs, we welcome clarification of the activities under Credit and Financial Institution that would trigger MLR obligations. Alignment between MLR and FSMA could be a good option and foster harmonisations.

24. In your view, would there be any unintended consequences of aligning Regulation 10 of the MLRs with FSMA, in terms of diverging from the EU position?	
Q25: Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs?	We believe that the FATF definition is open to interpretation and requires some clarifications in terms of operationalisation. We welcome further guidance, particularly on the possibility of screening goods, which is not a current practice. Some definitions of proliferation finance have a very broad interpretation, including any activity which is related to generating funds for the purposes of financing WMD proliferation (most studies of North Korean proliferation finance adopt this broad definition). The adoption of a broad definition will present challenges in terms of identifying such activity. On the contrary, we believe that it would be more feasible if the approach relied on a 'best efforts' basis at identifying such instances or where government authorities have provided information to identify such activity.
Q26: In your view, what impacts would the requirement to consider PF risks have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.	We believe that this depends on whether the requirement to consider proliferation financing risks can be considered under existing AML and sanctions programmes, drawing out where proliferation financing risks are considered. If not, this will lead to duplication in effort. In addition, if screening for PF is expected, it will become very burdensome on resources with limited impact. Instead of screening goods (which will be ineffective in most cases), it would be necessary to focus on existing screening for Sanctioned Parties, CDD controls and post-facto monitoring. Focusing on screening for goods could result in many false alerts which will be difficult to manage. The introduction of goods-based screening controls is likely to offer limited effectiveness in the detection and prevention of items of proliferation concern, particularly because firms would rely on the accuracy of goods descriptions. However, a description could be accurate but still contain insufficient information to enable identification as sensitive/dual-use items. Without this information, it is challenging for financial institutions to identify items of concern. The Nuclear Suppliers Group (NSG) and Missile Technology Control Regime (MTCR) lists of sensitive items are not lists that

	firms can readily screen against. Furthermore, sellers and purchasers tend to use brand names for the items. As an example, they would not refer to carbon fibre but to T700 or T1000 (these are brand names for Japanese company Toray's high spec carbon fibre). Descriptors in payment messages and trade documentation which clearly identify sensitive or dual-use goods would have to be agreed and approved by the appropriate regulatory authorities and mandated for businesses to use. We also believe that the best way to identify goods is through a review of the underlying documentation. For example, in a SWIFT message, field 70 might just have a reference/invoice number or broad description, whereas the underlying documentation, such as the packing invoice, would include the details. However, without mandatory requirements for what must be recorded, this will not be sufficient as it could still contain misleading or generalised descriptions. Post facto reviews may also yield better results. This means that the transaction will not be blocked, but there will likely be more documents to analyse, especially for trade transactions.
Q27: Do relevant persons already consider PF risks when conducting ML and TF risk assessments?	Please see our response to Q26. The risk of PF is assessed as part of firms' risk assessments. A subset of an entity will be considered as part of the risk assessment framework.
Q28: In your view, what impact would this requirement have on the CDD obligations of relevant persons? Would relevant persons consider CDD to be covered by the obligation to understand and take effective action to mitigate PF risks.	We welcome clarity from HMT on their PF expectations of firms. This should include consideration of the scale and size of the firm. We note that firms are already obliged to demonstrate that they have considered varying levels of impact. We believe that the impact would be minimal if this could be addressed through existing CDD measures. However, addressing clients involved in the manufacture/sale of strategically controlled goods would require additional resources, particularly for the identification of the clients that would fall into this category (either completed internally by asking all clients if they deal in such goods, or externally through the provision of lists of such entities enabling a more targeted approach).
Q29: In your view, what would be the role of supervisory authorities in ensuring that relevant persons are assessing PF risks and taking effective mitigating action? Would new powers be required?	No new powers should be required. PF risks are largely handled through sanctions controls – CDD for identifying clients with such linkages and screening to interdict against payments involving parties designated for proliferation-related activity.

Q30: In your view, does the proposed drafting for this amendment in Annex D adequately cover the intention of this change as set out? Please explain your reasons	The proposed drafting (particularly 19A) could lead to duplication of efforts since most of the requirements are already addressed through existing sanctions compliance programmes. It would be preferable, where necessary, to adapt existing sanctions and AML/CTF sanctions programmes to incorporate PF rather than to establish separate policies, procedures and controls which would require substantial resources and be largely duplicative of existing control frameworks.
Q31 to Q34: 31. Do you agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House, including LPs which are registered in England and Wales or Northern Ireland? 32. Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons 33. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible. 34. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible	We agree with this proposal. TCSP should always be subject to the MLRs, including when they incorporate LP and provide ancillary services. The current definition of business relationship provided by the MLR in Regulation 4 seems to trigger a business relationship at the time when a contract with an element of duration is established. We believe that this definition is not flexible enough to include other scenarios, for example in the FM products offerings, where contracts are signed for specific products. There may be instances, for certain products where there is no written contract with a customer, but there is a business relationship. Given the above, the term business relationship has broader meaning than contractual relationship and in the FM space there will not always be a contract. The same should also apply to TCSPs when incorporating firms and where there is not an element of duration. We would like to invite the HMT to revisit the definition of business relationship in order to include other possible scenarios applicable not only to TCSPs but also to the whole set of product offering. Currently, the definition implies that there is a contract with a specified duration, which may not always be the case.
Q35 to Q40: 35. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is asked to form any form of business arrangement	We agree with these proposals.

which is required to register with Companies House? 36. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d)? 37. Do you agree that the one-off appointment of a limited partner should not constitute a business relationship? 38. Do you consider there to be any unintended consequences of making these changes? Please explain your reasons. 39. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible. 40. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible.	
Q41: Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.	We disagree with this proposal. Extending the beneficial ownership discrepancy reporting on an ongoing basis would only be useful if it assists the Government to combat economic crime and not create a tick-box obligation on relevant persons for managing the Companies House (CH) register. Any extension to the current discrepancy reporting requirements on an ongoing basis should be proportionate and based on empirical evidence of its efficacy in combating economic crime. We strongly believe that CH reform should minimise the intervention of the private sectors to report discrepancies.

	Therefore, we encourage CH to verify the information before incorporation as well as implement controls in place to review the accuracy of such information on an ongoing basis. This will be in line with FATF recommendations. Additionally, we should clarify the extra-territorial application. As an example, we would like to understand whether BO discrepancies are reportable for all UK corporations even if the business relationship is not within the UK, such as in the case of a UK corporation onboarded in Hong Kong. There is a misalignment between the definition of beneficial owner under the MLRs and People with Significant Control (PSCs), and the registration requirements for PSCs which may include legal entities and not a natural person/individual. HMT should address these issues before expanding the current obligations. We welcome additional clarity on the connectivity between CG and HMRC, without this, it is challenging to agree with the extension to beneficial ownership discrepancy reporting on ongoing basis.
Q42: Do you consider there to be any unintended consequences of making this change? Please explain your reasons.	The obligation to report a discrepancy when a regulated firm '*should reasonable have become aware of*' is very broad and open to interpretation. Regulated firms already have an obligation to keep documents and information up to date under Regulation 11(b), and introducing this term is not helpful. Although the consultation refers to '*any*' discrepancy, the legislation needs clarify that it refers to reporting material changes to the beneficial ownership, rather than '*any'* discrepancy.
Q43: Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?	Please see our response to Q41, where we suggest that CH and HMRC should be aligned. We would suggest a central mechanism in order to facilitate a more effective approach to information sharing We recognise that in the UK, the Bank Account Portal (BAP) could be a starting point, but ideally, we welcome the cooperation of company registrars across different jurisdictions in the identification of beneficial owners. The UK Government could revisit the Bank Account Portal (BAP) concept and its adoption in other EU countries for the purpose of identifying beneficial ownership discrepancies that would be directly fed to the relevant authorities, including CH.

	Adopting the BAP concept, the UK Government could repurpose the mechanism for discrepancy reporting and include all UK-incorporated customers of relevant persons, and not only customers that hold current accounts with banks. The information could be submitted in real time and/or in bulk through API connectivity and eliminate manual discrepancy submission.
Q44: In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?	We believe that there would be an incremental improvement in information validity that benefits Companies House at a significant cost to the relevant persons.
Q45: Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?	We agree with the proposal that Regulation 52 gateway under the MLRs be expanded to allow for reciprocal protected sharing from relevant authorities (including law enforcement) to supervisors. However, we believe that this should be done purely for the purpose of assisting LEAs with investigations. Data sharing must be limited to information necessary for such investigations. It is unclear what the BEIS would use such intelligence or information for. It would be appropriate to clarify the use before expanding the scope of Regulation 52.
Q46: Are there any other authorities which would benefit from the intelligence and information sharing gateway provided by Regulation 52? Please explain your reasons.	We believe that this power should be extended as widely as possible. Although not an "authority" under the MLR, this power should be extended to mandatory sharing of relevant intelligence/ information with banks themselves. We should also encourage much wider cross-border sharing, given that currently Regulation 50 (4) only applies to overseas authorities when the relevant person (or bank in our case) is headquartered in the UK. It would be helpful if this could be extended to cover any situation where the bank (relevant person) operates in the UK, regardless of where it is headquartered. This would enable a broader range of "authorities" to be engaged in countries where specific threats to the UK originate.

Q47: In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?	We support greater information sharing amongst the authorities.
Q48: In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.	We believe that one of the potential impacts may be related to data privacy. Therefore, when sharing information provided by a firm between them, supervisory authorities should keep firms informed. Furthermore, the information should be shared strictly on a need-to-know basis. On this, firms welcome clarity and a clear explanation of how the 'need to know' basis will be applied, to ensure that firms understand their obligations.
Q49 to Q50: 49. In your view, what (if any) impact would the expansion of Regulation 52 have on supervisory authorities, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible. 50. Is the sharing power under regulation 52A(6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?	No feedback provided.
Q51 to Q55: 51. What regulatory burden would the proposed changes present to Annex 1 financial institutions, above their existing obligations under the MLRs? Please provide evidence where possible. 52. In your view, is it proportionate for the FCA to have similar powers across	We welcome the overall approach to the expansion of the FCA's supervisory powers. However, we also wish to emphasise that the approach and application should be proportionate to the Money Laundering risks.

all the firms it supervises under the MLRs? Please explain your reasons. 53. In your view, would the expansion of the FCA's supervisory powers in the ways described above Annex 1 firms allow the FCA to fulfil its supervisory duties under the MLRs more effectively? Please explain your reasons in respect of each new power. 54. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on industry and the FCA's wider supervised population, both in terms of costs and wider impacts? Please provide evidence where possible. 55. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on the FCA, both in terms of costs and wider impacts? Please provide evidence where possible.	
Q56: Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?	AFME agrees with the proposal
Q57: In your view, what impacts would the implementation of the travel rule have on businesses, both in terms of costs and wider impacts? Please provide evidence where possible.	Currently, there is no global technological solution or standard for travel rule implementation in the cryptoasset sector which would be comparable to the global standards in place for the obligations with respect to funds transfers. Global standards around how to implement these requirements to ensure consistency would be beneficial. This relates to, for example, what format the information is shared in and how frequently it is shared (e.g., every transaction vs. whitelisting entities). Global standards would allow CASPs to effectively share this information and avoid similar barriers and fragmentation that are currently being addressed as part of the G20 roadmap to enhance cross-border payments[2]. Any UK legislative update should provide sufficient flexibility and consideration to the developments in the global standards and implementation. The implementation costs are difficult to estimate in the absence of interoperable technological solutions, the complexity of

[2] https://www.fsb.org/2020/10/enhancing-cross-border-payments-stage-3-roadmap/

	cryptoassets and the underlying decentralised ledger technology. It is reasonable to expect that the cost and implementation timelines will be significant. The UK Government should consider a staged approach to implementation and technical guidance for the industry that is interoperable with the global standards.
Q58: Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?	We agree with the proposal. It will take time for firms to implement these requirements given the novel ecosystem conditions and technical infrastructure that crypto-assets funds transfers take place within. We propose that the grace period should be reflective of the time period provided for the original implementation of the Funds Transfer Regulation (i.e. 24 months, with an additional 4-6 months to implement real time monitoring systems).
Q59: Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?	We agree, as long as they are aligned with the FTR requirements for money/fiat currency transfers and do not introduce new obligations on relevant persons to obtain additional CDD information above the requirements under the MLRs. The legislation should clarify that personal document number (national identify number), date and place of birth do not need to accompany every cryptoasset transaction but may be used as a substitute to missing payer (originator) address. Additionally, we would highlight that the focus on a concept of bilateral data exchange between CASPs may not be the only solution available in a decentralised network. This should be considered when defining a feasible review period for the regulation in the long term.
Q60: Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?	AFME agrees with the proposal.
Q61: Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the GBP 1,000 threshold?	AFME agrees with the proposal.
Q62: Do you agree that where a beneficiary's VASP receives a transfer	We welcome that UK authorities are taking steps to provide clear rules for transfers received from an un-hosted wallet.

from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?	
Q 63. Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?	We note that due to the absence of an acting crypto-asset service provider with access to an un-hosted wallet, it may be difficult for obliged entities to obtain or reasonably verify the identifiable information on crypto-asset transfers between their client's wallet and an un-hosted wallet in the way that is expected today. There are however a range of other actors in this new ecosystem that do not exist in the traditional payments infrastructure to consider. For instance, there may be an opportunity for blockchain operators to play a role in fulfilling AML/CFT requirements, noting that there are a range of blockchain solutions in operation today which have differing levels of centralisation/oversight (e.g. private-permissioned, public-un-permissioned, or hybrid networks). We would welcome the opportunity for further dialogue with UK authorities in considering a possible review of the entities in scope of this Regulations to sufficiently fulfil AML/CFT obligations.

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