

CCBE response to the [public consultation](#) “Preventing money laundering and terrorist financing – EU rules on public-private partnerships (PPPs)”

2/11/2021

I. Context

Question 1. In which ways do you consider that the exchange of information between competent authorities and private sector entities can contribute to the prevention of and fight against money laundering and the financing of terrorism?

5000 character(s) maximum

The feedback provided by FIUs to obliged entities is essential and may positively influence the fight against ML/FT. This feedback on past reports can be taken into account by obliged entities when drawing future reports and therefore enhance their quality. This can lead to FIUs receiving better quality reports upon which they may act.

Moreover, feedback by FIUs on emerging and evolving money-laundering trends, typologies, and risk indicators might help obliged entities to detect and identify risks, which is an essential element of the risk-based approach.

The European and national authorities have the obligation to adequately inform the obliged entities. The authorities should fulfil these obligations first, to enable obliged entities that are not large enterprises, to find the necessary information more easily. Informing adequately should also include information that is relevant for the type of obliged entity and its role in transactions.

We would therefore recommend improving the quality of the national AML/CFT guidance, by being more specific in what lawyers in their role (assisting with transactions) can recognise.

Question 2. Have any formal and/or informal mechanisms been put in place in your country (in the case of private sector entities, ‘country’ is to be understood as place of operation) in order to increase cooperation and exchange of information between competent authorities and private sector entities to prevent and fight money laundering and the financing of terrorism?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 2:

5000 character(s) maximum

Question 3. In your view, what does a 'public-private partnership' mean in the context of preventing and fighting against money laundering and the financing of terrorism?

5000 character(s) maximum

PPPs in the area of AML could provide a platform for exchange of best practices and might help improve the exchange of information between public authorities and private sector entities.

Such a partnership has already existed, for example in Portugal for quite some years, where all profession representatives and authorities meet and discuss. These discussions are perceived by all the parties as an opportunity to learn.

If there is an exchange of information within the form of a PPP, this should be under conditions and a framework with guarantees and protection of fundamental rights.

Question 4. Are you of the opinion that partnerships between public authorities and private sector entities are needed in order to prevent and fight money laundering and the financing of terrorism efficiently and effectively?

- Yes
- No
- Don't know / no opinion / not applicable

Question 5. In your view, in case a public-private partnership is set up to prevent and fight money laundering and terrorist financing, which of the following public authorities should take part? Please select as many answers as you like

- Financial intelligence units (FIUs)
- Law enforcement authorities
- Prosecution authorities
- Anti-money laundering and countering terrorist financing supervisory authorities
- Customs authorities
- Tax and recovery administration authorities
- Asset recovery offices (AROs)
- Other

Question 5.1 Please explain why you provided that/these answer(s) to question 5 and further elaborate:

5000 character(s) maximum

The general aim of PPP structures should be to improve the risk-based approach and the detection of risks. Therefore, those institutions which share the same goal and who deal with money-

laundering/terrorism financing risks at an early stage should be part of PPPs. Prosecution, customs, tax authorities as well as AROs have a repressive, not a preventive goal.

Question 6. In your view, in case a public-private partnerships is set up to prevent and fight money laundering and the financing of terrorism, which of the following private sector operators should participate?

Please select as many answers as you like

- Financial institutions
- Credit institutions
- Auditors, external accountants and tax advisors
- Notaries and other independent legal professionals
- Trust or company service providers
- Virtual asset service providers (VASPs)
- Estate agents
- Traders in goods
- Providers of gambling services
- Other, e.g. telecom operators

Question 6.1 Please explain why you provided that/these answer(s) to question 6 and further elaborate:

5000 character(s) maximum

All obliged entities have legislative obligations and implement measures to prevent money-laundering/terrorism financing accordingly.

As we already explained, exchange of information and improvement of guidance may be useful for all types of obliged entities. A PPP should however only be possible in limited situations. A PPP must take into consideration not only the role of lawyers in the society, but also the applicable deontological rules and the size of law firms.

In addition, in order to answer to that question, the concept of “other independent legal professionals” should be adequately explained and clarified in advance, in particular as regards the specific role of lawyers engaging on behalf of their clients. The engagement of legal professionals such as practitioners, law firms, etc. in the mechanism of “exchange of information” with the prosecuting authorities may jeopardise the effective implementation of fundamental rights such as the personal data protection rights, the presumption of innocence, legal privilege, etc. Therefore, we should remain very careful that none of the measures proposed obstruct, threaten, or contravene, in any direct or indirect way, the freedom and independence of the legal profession or the self-regulation principle.

Question 7. In your opinion, how do public-private partnerships interact with private-to-private information sharing within a group or between private sector entities in general?

5000 character(s) maximum

They may serve as a general platform for the exchange of information and best practices amongst private sector entities as well, i.e. the information sharing may not only be vertical (between public and private entities) but also horizontal (between private entities from different sectors).

Question 8. In your view, to what extent should non-governmental organisations (NGOs), research and academic institutions be involved in discussions about setting up and design of public-private partnerships to prevent and fight money laundering and the financing of terrorism?

- They should be extensively involved
- They should be involved to a limited extent
- They should not be involved at all
- Don't know / no opinion / not applicable

Please explain your answer to question 8:

5000 character(s) maximum

PPPs should have the possibility to rely on research and academic institutions if necessary for specific policy or practical matters and these institutions could give a scientific approach to behaviour prevention or suspicious conduct identification.

In addition, in our opinion, there is no reason to formally involve NGOs in PPPs, as it could make the positions in the PPPs even more unclear. Of course, NGOs still have an important role, e.g. in assessing if fundamental rights are respected adequately.

II. Existing national experience and practices

Question 9. Has a public-private partnership been established in your country in order to fight and prevent money laundering and/or the financing of terrorism?

- Yes
- No
- Don't know / no opinion / not applicable

Question 10. Are you aware of any legal barriers that exist in your country when it comes to setting up a public-private partnership in the framework of preventing and fighting money laundering and the financing of terrorism?

- Yes
- No
- Don't know / no opinion / not applicable

III. Public-private partnerships for the exchange of strategic information (e.g. typologies, trends, patterns, risk indicators, feedback to suspicious transaction reports)

Question 11. In your opinion, what should be the main objectives of a public private partnership for the exchange of strategic information in the context of preventing and fighting money laundering and the financing of terrorism?

Please select as many answers as you like

- Sharing of strategic information (typologies, trends) in order to enhance the understanding of money laundering and terrorist financing (ML/TF) risks
- Improve the quality of suspicious transaction and activity reporting by obliged entities
- Preparation of risk indicators and red flags in order to improve the detection by private sector entities of suspicious financial flows
- Work on risk mitigation measures related to specific money laundering and terrorist financing (ML/TF) risks
- Joint capacity building/training activities and provision of technical assistance
- Other

Please elaborate on your answer to question 11:

5000 character(s) maximum

In our view, the main objective of PPPs is to share information about typologies and trends in order to enhance the understanding and detection of money-laundering/terrorism financing risks by obliged private sector entities and improve the prevention of money laundering and terrorist financing.

Such cooperation between authorities and public associations should mainly focus on the preparation of risk indicators and red flags in order to improve the detection by private sector entities of suspicious financial flows. Therefore, such a cooperation could help to increase awareness and improve training as regards typologies and red flags.

Question 12. Based on your experience, what impact (if any) do public-private partnerships for the exchange of strategic information have in the prevention of and fight against money laundering and terrorist financing and how significant is it?

- Very positive effect
- Some positive effect
- Neutral
- Some negative effect
- Very negative effect
- Don't know / no opinion / not applicable

Please explain your answer to question 12 and give examples:

5000 character(s) maximum

Question 13. Where do you see risks stemming from the exchange of information in a public-private partnership for the exchange of strategic information in the context of preventing and fighting money laundering and the financing of terrorism?

Please select as many answers as you like

- Profiling with regard to specific persons or groups of persons
- Official secrecy and the disclosure of sensitive non-public information
- Bank secrecy
- Legal privilege
- Social and economic inclusion (e.g. de-risking and reputational risks)
- Other

Please elaborate further on your answer to question 13:

5000 character(s) maximum

The exchange of information should not impose obligations on lawyers to exchange information covered by legal professional privilege/professional secrecy. There is an exemption for lawyers in case of reporting obligations and this exemption should apply *a fortiori* to exchange of information. Therefore, PPPs might not be used to exchange information on individual cases.

There are several reasons for this view. First, exchanging such data would mean to exchange highly sensitive data on persons who are not even accused of a crime in the sense of the law. Second, the majority of affected persons would never know that their data was transferred to different identities and hence could not do anything against this (or related negative consequences). Third, when PPPs involve commercial providers, data could be misused for purposes of their own economic activities.

Furthermore, there could be a risk that public-private partnerships may enhance the negative effects of AML/CFT-legislation that are already visible in the financial sector, through de-risking practices and exclusion.

Last but not least, due consideration should be given to the obligations under the GDPR and the protection of fundamental rights.

Question 14. In your opinion, in relation to the application of which rules is the issuing of guidance with respect to public-private partnerships for the exchange of strategic information most needed?

Please select as many answers as you like

- Provision of feedback on suspicious transaction reports by the FIU to the obliged entity
- Fundamental rights (e.g. data protection, privacy)
- Antitrust rules (e.g. to avoid asymmetries of information)
- Other

Please elaborate further on your answer to question 14:

5000 character(s) maximum

It would be useful for lawyers that have to file suspicious transaction reports to receive feedback from FIUs. Guidance in this regard would certainly incite FIUs to produce such feedback.

Moreover, the CCBE believes that all stakeholders would benefit from clear guidance, especially with regard to compliance with the GDPR obligations and the protection of fundamental rights, as 1) not all data can be exchanged/merged/forwarded to third parties, and 2) the CCBE wishes to stress that PPPs will only be successful if there are clear objectives and benefits of those types of partnerships and the administrative burden is not too high.

IV. Public-private partnerships for the exchange of operational information and intelligence on suspects in a criminal investigation and/or persons of interest prior to the opening of a formal criminal investigation

Question 15. In your opinion, what should be the main objectives of a public-private partnership for the exchange of operational information in the context of fighting money laundering and the financing of terrorism?

Please select as many answers as you like

- Obtaining leads in the context of criminal investigations, based on the sharing of operational information by competent authorities
- Obtaining evidence as regards suspects in criminal investigations based on operational information shared by competent authorities
- Monitoring the transactions of suspects in criminal investigations
- Identifying persons of interest prior to the initiation of a formal criminal investigation by the competent authorities
- Monitoring the transactions of persons of interest prior to the initiation of a formal criminal investigation
- Mapping criminal networks, based on the sharing of operational information by competent authorities
- Other

Please elaborate on your answer to question 15:

5000 character(s) maximum

In our view, PPPs are not designed to exchange information on an individual case-by-case basis.

Question 16. Based on your experience, what impact (if any) do public-private partnerships for the exchange of operational information have in the fight against money laundering and how significant is it?

- Very positive effect
- Some positive effect
- Neutral
- Some negative effect
- Very negative effect
- Don't know / no opinion / not applicable

Please explain your answer to question 16 and give examples:

5000 character(s) maximum

Question 17. Based on your experience, what impact (if any) do public-private partnerships for the exchange of operational information have in the fight against the financing of terrorism and how significant is it?

- Very positive effect
- Some positive effect
- Neutral
- Some negative effect
- Very negative effect
- Don't know / no opinion / not applicable

Please explain your answer to question 17 and give examples:

5000 character(s) maximum

Question 18. Where do you see risks from the exchange of information in a public-private partnership for the exchange of operational information in the context of fighting money laundering and the financing of terrorism?

Please select as many answers as you like

- Fundamental rights (rights to the protection of personal data and privacy, the presumption of innocence)
- The integrity of ongoing criminal proceedings
- Official secrecy and the disclosure of sensitive information related to ongoing criminal proceedings
- Bank secrecy
- Legal privilege
- Social and economic inclusion (e.g. de-risking and reputational risks)
- Other

Please elaborate further on your answer to question 18:

5000 character(s) maximum

See our answer to Question 14. In addition, it would be legitimate to ask whether current PPPs practices have been reviewed with regard to data protection, privacy and human rights. Moreover, one should think about the potential for PPPs to be used by FIUs to access information about citizens by sharing intelligence in a PPP which could trigger reports on persons of interest - there is the potential that PPPs used in this way may violate privacy protections, due process rights, evidence rules and obviate the need for court ordered warrants for information. Data protection violations would be the least of the concerns with the potential access a PPP can provide.

Question 19. In your opinion, in relation to the application of which rules is the issuing of guidance with respect to public-private partnerships for the exchange of operational information most needed?

Please select as many answers as you like

- Fundamental rights (e.g. data protection, privacy, presumption of innocence)
- The applicable criminal procedural rules
- Antitrust rules
- Other

Please elaborate further on your answer to question 19:

5000 character(s) maximum

We would like to re-emphasize our position that PPPs should not be used for the exchange of operational information on a case-by-case basis.

Question 20. Are you of the opinion that the risks from the exchange of information in a public-private partnership for the exchange of operational information are different in the context of fighting money laundering than in a public-private partnership in the context of fighting the financing of terrorism?

- Yes
- No
- Don't know / no opinion / not applicable

Please elaborate further on your answer to question 20:

5000 character(s) maximum

V. Transnational public-private partnerships

Question 21. In your opinion, what information can be shared in a transnational public private partnership in the framework of preventing and fighting money laundering and the financing of terrorism?

- Strategic information (typologies, trends, patterns, risk indicators)
- Operational information (intelligence on suspects or persons of interest)
- Both types of information
- Other

Please elaborate further on your answer to question 21:

5000 character(s) maximum

Question 22. In your opinion, what are the main potential benefits of establishing a transnational public-private partnership in the framework of preventing and fighting money laundering and the financing of terrorism?

- Better understanding of the cross-border risks associated with money laundering and the financing of terrorism

- More effective detection of cross-border suspicious financial flows by private sector entities
- More effective cross-border financial investigations into money laundering and the financing of terrorism
- Other

Please elaborate further on your answer to question 22:

5000 character(s) maximum

[PPPs may improve the detection of money-laundering/terrorism financing by improving the understanding of risks and the knowledge of typologies and trends.](#)

Question 23. Where do you see risks stemming from the exchange of information in a transnational public-private partnership in the context of preventing and fighting money laundering and the financing of terrorism?

Please select as many answers as you like

- Rights to the protection of personal data and privacy
- Fundamental rights, including the presumption of innocence
- The integrity of ongoing criminal proceedings
- Official secrecy and the disclosure of sensitive information related to ongoing criminal proceedings
- Bank secrecy
- Legal privilege
- Social and economic inclusion (e.g. de-risking and reputational risks)
- Other

Please elaborate further on your answer to question 23:

5000 character(s) maximum

[See our answer to Question 13.](#)

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.