



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

Bank, insurance and financial crime  
Financial crime

**CONSULTATION DOCUMENT**

**PUBLIC CONSULTATION ON GUIDANCE ON THE RULES APPLICABLE  
TO THE USE OF PUBLIC-PRIVATE PARTNERSHIPS IN THE FRAMEWORK  
OF PREVENTING AND FIGHTING MONEY LAUNDERING  
AND TERRORIST FINANCING**

**Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

You are invited to reply **by 2 November 2021** at the latest to the **online questionnaire** available on the following webpage:

[https://ec.europa.eu/info/publications/finance-consultations-2021-anti-money-laundering-public-private-partnerships\\_en](https://ec.europa.eu/info/publications/finance-consultations-2021-anti-money-laundering-public-private-partnerships_en)

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

Views are welcome, in particular, from Member States, national financial intelligence units, law enforcement authorities, supervisory authorities, data protection authorities, private sector entities, for example, entities required to apply anti-money laundering and counter-terrorist financing measures under the [Anti-Money Laundering Directive](#) and their European or national umbrella organisations, EU bodies and agencies, including the [EU Agency for Law Enforcement Cooperation \(Europol\)](#), the [Fundamental Rights Agency \(FRA\)](#), [Eurojust](#) and the [European Banking Authority \(EBA\)](#), academic organisations, research institutions, think-tanks, non-governmental organisations (NGOs) and EU citizens.

We invite you to add any documents that you would deem useful to your replies and to always use this questionnaire, even if you would like to submit such additional documents.

Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them with supporting data. Where appropriate, provide specific operational suggestions to questions raised. [Replies limited to "yes" or "no" will not be sufficient for further analytical elaboration].

Do not feel obliged to answer the complete questionnaire. Select those questions which you deem relevant to answer.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: [https://ec.europa.eu/info/publications/finance-consultations-2021-anti-money-laundering-public-private-partnerships\\_en](https://ec.europa.eu/info/publications/finance-consultations-2021-anti-money-laundering-public-private-partnerships_en)

You are invited to read the [privacy statement attached to this consultation](#) for information on how your personal data and contribution will be dealt with.

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at [fisma-financial-crime@ec.europa.eu](mailto:fisma-financial-crime@ec.europa.eu).

## INTRODUCTION

The effective exchange of information is crucial in the fight against money laundering and the financing of terrorism (AML/CFT). This includes not only the exchange of information between public authorities (e.g. financial intelligence units (FIUs), law enforcement authorities and supervisory authorities), but also the exchange of information between authorities from the public sector and private sector entities.

The [Commission's action plan for a comprehensive Union policy on preventing money laundering and terrorist financing](#)<sup>1</sup> notes that in the context of making better use of financial intelligence, the role of public-private partnerships should be encouraged to the extent possible as in some cases the nature of the information might limit its sharing and such sharing must comply with the data protection legal framework and with other rules. Public-private partnerships entail the sharing of information between competent authorities and the private sector and can take various forms. Some are limited to the exchange of information on, for example, typologies, trends and patterns by FIUs to obliged entities, whilst others pertain to the sharing of operational information and intelligence on suspects by law enforcement authorities to obliged entities for the purposes of monitoring the transactions of these suspects. The current EU AML/CFT framework (the [4<sup>th</sup> Anti-Money Laundering Directive](#)<sup>2</sup>) already requires FIUs to provide feedback, where practicable, to obliged entities on the usefulness and follow-up of the suspicious transaction reports.

Due to differences in the legal frameworks and practical arrangements across the EU Member States, the Commission considers it essential to provide guidance and share good practices for public-private partnerships in relation, in particular, to antitrust rules, safeguards and limitations in relation to data protection and guarantees on fundamental rights. In the May 2020 action plan, the Commission also announced that it will consider the possibility of requesting the [European Data Protection Board \(EDPB\)](#) to issue an opinion as regards the data protection aspects of public-private partnerships.

In this context, and in line with the [better regulation principles](#), the Commission is herewith inviting stakeholders to express their views. The consultation aims to obtain information with regard to, for example

- the types of public-private partnerships currently operating in the EU Member States in the area of preventing and fighting money laundering and terrorist financing
- the public authorities (e.g. FIUs, law enforcement, supervisory authorities) and private sector entities which participate
- the types of information exchanged within those partnerships and the measures put in place to guarantee the preservation of fundamental rights

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<sup>1</sup> [Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing 2020/C 164/06, OJ C 164, 13.5.2020, p. 21-33](#)

<sup>2</sup> [Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing amended by Directive \(EU\) 2018/843 of 30 May 2018, OJ L 156, 19.6.2018, p. 43–74](#)

- the mechanisms put in place to measure the effectiveness and success of those partnerships (e.g. key performance indicators (KPIs) or any other performance metrics)
- the impacts and added value of the various public-private partnerships in the fight against money laundering and the financing of terrorism
- the impacts on fundamental rights, including the presumption of innocence, as well as on the due process of criminal proceedings
- good practices in the development and operation of public-private partnerships

potential obstacles to the exchange of information and challenges faced by the authorities and entities participating in public-private partnerships in the area of preventing and fighting money laundering and terrorist financing and what do they pertain to

The outcome of this public consultation will provide the Commission with sufficient information and evidence for the purposes of preparing the guidance on the rules applicable to the use of public private partnerships in the framework of preventing and fighting money laundering and terrorist financing and issue best practices in Q4 2021.

## CONSULTATION QUESTIONS

### 1. 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?

**Question 2.** Have any formal and/or informal mechanisms been put in place in your country<sup>3</sup> 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
- Do not know

**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?

**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
- Do not know

If you answered ‘yes’, please explain why and give examples.

**Question 5.** In your view, in case a public-private partnership is set up to prevent and fight money laundering and terrorist financing, which public authorities should take part (you can select more than one answer)?

- 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 (please specify)

Please explain why you provided that/these answer(s) and further elaborate.

**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 (you can select more than one answer)?

- Financial institutions

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<sup>3</sup> In the case of private sector entities, “country” is to be understood as place of operation.

- 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 (please specify)

Please explain why you provided that/these answer(s) and further elaborate.

**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?

**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
- Do not know

Please elaborate further on your answer. Existing national experience and practices

## 2. 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
- Do not know

**If your answer is yes, please look at questions 9.1 – 9.10. If your answer is no, please skip to question 9.11.**

**Question 9.1** Please specify which competent authorities and which private sector entities participate in the public-private partnership.

**Question 9.2** Please elaborate on the main objectives of the public-private partnership.

**Question 9.3** Please specify what types of information are exchanged in the context of the partnership:

- a) Strategic information on, for example, typologies, trends, patterns and risk indicators by FIUs to obliged entities:
- b) Operational information and intelligence on suspects by law enforcement authorities to obliged entities:

**Question 9.4** Please elaborate on the type of products that are developed within the framework of the public-private partnership.

**Question 9.5** Please explain if any data security and member vetting practices and procedures have been implemented in the public-private partnership you take part in.

**Question 9.6** Please explain if a governance structure has been put in place to administer the public-private partnership and oversee the implementation of the partnership's objectives and priorities as well as compliance with existing rules.

**Question 9.7** Please explain if there are any major developments foreseen for the coming years. These could concern, for example, extending the partnership's mandate, growing membership, etc.

**Question 9.8** Please elaborate further on the results achieved by the public-private partnership.

**Question 9.9** Are you aware of any good practices in the development of a public-private partnership in the framework of preventing and fighting money laundering and/or terrorist financing that could be applied as regards the design, governance and operation of public-private partnerships in the area of AML/CFT in other countries?

- Yes
- No
- Do not know

**Question 9.10** Please explain if you have witnessed any negative consequences as a result of the public-private partnership pertaining, for example, to ‘de-risking’, termination of business relationship, social and/or economic exclusion, discrimination.

**If your answer to question 9 is no, please respond to question 9.11.**

**Question 9.11** Are you aware whether any reflections and discussions on establishing a public-private partnership in the context of preventing and fighting money laundering and/or the financing of terrorism are currently taking place or have taken place in the past in your country?

- Yes
- No
- Do not know

If you answered ‘yes’, please explain why and give examples.

**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
- Do not know

If you answered ‘yes’, please explain why and give examples.

**3. 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?

- 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 specify)

Please elaborate on your answer.

**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
- Do not know

Please explain and give examples.

**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 (you can select more than one answer)?

- 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 specify)

Please elaborate further on your answer.

**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 (you can select more than one answer)?

- 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 specify)

Please explain your answer.

**Question 14.1** If you answered “provision of feedback on suspicious transaction reports by the FIU to the obliged entity”, please elaborate further on the feedback that would be most beneficial.

**4. 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 (you can select more than one answer)?

- 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 specify)

Please elaborate on your answer.

**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
- Do not know

Please explain and give examples.

**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
- Do not know

Please explain and give examples.

**Question 18.** 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 (you can select more than one answer)?

- 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 specify)

Please elaborate further on your answer.

**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? (you can select more than one answer)?

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

Please elaborate further on your answer.

**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
- Do not know

Please elaborate further on your answer.

## 5. 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 specify)

Please elaborate further on your answer.

**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 (you can select more than one answer)?

- 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 specify)

Please elaborate further on your answer.

**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 (you can select more than one answer)?

- 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 specify)

Please elaborate further on your answer.