

## **Response to Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing**

On 7 May the European Commission published an action plan on preventing money laundering and terrorist financing setting out plans for concrete measures to better enforce, supervise and coordinate the EU's rules. CEPI represents real estate professionals directly concerned by the implementation of the rules as obliged entities under EU legislation.

We support the fight against the use of the real estate sector for money laundering and terrorist financing and welcome the comprehensive approach taken in the action plan. It is important that those directly involved in the application of the rules are clearly informed and able to comply with the requirements which should be proportionate to the risk involved. There needs also to be an understanding of the roles played by real estate professionals and the extent to which they are able to recognise signs of misconduct.

We would like to take the opportunity of the current consultation to address the following specific aspects of the action plan:

### **Effective application of AML rules**

CEPI recognises the importance of the effective implementation of the AML rules. This concerns in particular clear and effective guidance for real estate professionals on due diligence requirements. Issues of concern include ensuring effective and affordable access to the registers of beneficial ownership. This is important for real estate professionals. Clarity is also needed on the identification of politically exposed persons (PEPs). Crucially protection must be available for the confidentiality of suspicious transaction reports. For the effective application of the rules it must be possible for professionals to understand and readily comply with them.

### **A single EU rulebook**

There are differences in the implementation of the AML rules between countries. We understand the concern of the Commission about diverging requirements across Member States which can include additional requirements in some countries. We welcome greater precision and clarity about the rules. A more harmonised approach to issues such as the identification of PEPs would be welcome. In considering changes it is vital to keep administrative and financial burdens for obliged entities to a minimum taking a risk-based approach.

It is suggested in the action plan that the Commission will propose a more harmonised set of rules in early 2021. In principle we welcome this approach. The fragmentation of the rules leads to confusion in the real estate sector and an uneven approach. Greater harmonisation and the development of a shared EU rulebook would facilitate more effective application of the rules and certainty for obliged entities.

However, if rules are to be harmonised what are the main considerations and what rules should be harmonised? In the real estate sector rules in different countries vary to take into account the

different responsibilities of estate agents regarding sales and lettings, particularly concerning the holding of funds with other professionals being actively involved in the transaction. For example, in Ireland agents handle a maximum of 5% of the total proceeds (normally the deposit), the solicitor handles the rest and immediately there are two sets of AML checks, one by the agent and the other by the solicitor. In Germany, the agent is not involved in the financial transaction and doesn't accept someone else's money. That happens between the parties. The roles of obliged entities in different countries need to be studied and their roles and responsibilities better understood.

### **EU-level supervision**

An effective form of supervision is vital for the effective implementation of the rules on AML. Inevitably there are variations in the arrangements put in place for supervision between countries. Therefore, we appreciate the need to have an integrated supervisory system at EU level. We understand that such a supervisor could be tasked, on its own or jointly with the national supervisor, with carrying out supervision of clearly defined obliged entities or types of activities for a given period of time, based on the degree of risk posed. Another option could be to combine direct supervisory powers for some types of obliged entities, to be carried out in coordination with Member States, with coordination and oversight powers for other entities.

The real estate sector is diverse with many differences between markets and the activities and responsibilities of real estate professionals. Therefore local contacts and understanding are important and it is difficult to see how a European supervisory body could supervise agents all over Europe. For example in Ireland the Property Regulator is responsible and has the supervisory role for AML. It works well as it is part of the regulations inspections they carry out on agents. Such national knowledge is important and checks can be carried out more efficiently at this level. Therefore, whilst we understand the reasoning behind the creation of an EU supervisor we do not consider that it should cover all risk areas from the outset. It would be better to limit its responsibilities to the financial sector, or financial institutions only, as in the finance sector there is less divergence as to risk and responsibilities. Costs for obliged entities should not be increased by the creation of an EU-level supervisor.

### **General remarks**

We would like to take this opportunity to make some general remarks that we ask to be taken into account for the real estate sector. There needs to be consistency about checks and there should be some way of ensuring compliance by checking the files of obliged entries once a year, making sure AML training is done and AML officers are appointed etc. Penalties for breach of the regulations could include on the spot fines or temporary suspension of licences in countries which are regulated.

As already mentioned, obliged entities complete different functions in different countries and these functions need to be better understood in order to improve reporting in the real estate sector. It is vital that those who do make STRs (in full) are able to be protected. There is general reluctance to become involved in crimes committed by others and those who come forward need to be better protected right across Europe.

It can also be difficult and wasteful to have obliged entities completing CDD (in full) when they are handling only a small amount of money as a deposit and other professionals involved in the same real estate transaction are required to carry out the same CDD on the same clients. Ways need to be found to improve coordination and reduce duplication. There are also differences between countries for example as to the checks to be carried out on buyers and sellers and if the rules are to be harmonised such issues need to be addressed.

In general obliged entities need more advice concerning the type and strength of STR required to avoid time having to be spent on information that is not useful. There appears to be very little feedback given to obliged entities who risk having to work in a vacuum, not knowing what the responsibilities and actions are after they report information. Therefore communication between obliged entities and the relevant authorities could be improved.

It needs to be acknowledged that it is easy to regulate AML requirements for those who are already regulated, but this does not mean that all crimes will be caught. It is important to look at the full range of criminal activity. It would also be helpful to have one overall body at national level to deal with reporting requirements. For example, in Ireland the obliged entity must submit two reports, one to the FIU (in full) or police and the other to the revenue. In Germany, the report must only be made online to the FIU. That should be sufficient everywhere and all such reports should be anonymous. If information is needed at a later stage the FIU or appropriate body should have the authority to get any papers and information legally required.

At the moment there is a risk that there are too many steps involved in the AML process, from local regulation to STRs, revenue and police, making it difficult for obliged entities to understand how the system works. The success of the AML regime comes down to information, and obliged entities must know what they have to do with it, when and where, and that they may act without fearing the consequences. Money laundering is a global problem that needs to be solved with local information and such information represents the building blocks of any information gathering. This is a process that needs to be properly understood and evaluated at all levels, national, European and international.

Therefore CEPI asks that, in implementing the action plan, the Commission take into account the particular needs of the real estate sector and works together with real estate professionals to increase the effectiveness of the AML regime with greater transparency and cooperation.

CEPI aisbl  
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### ***Connecting European Real Estate Professionals Across Europe***

*The mission of CEPI, the European Association of Real Estate Professions, is to support the European real estate market and cross-border transactions by enhancing and strengthening the work and activities of real estate professionals. We represent twenty six national professional organisations of estate agents and property managers based in eighteen EU and EFTA countries. Their individual members are active in all sectors of the residential real estate market on a daily basis involving both sales transactions and long-term management. Transparency Register ID number: 1094652600-90.*