

## Insurance Europe Position Paper on the proposal for the fourth AML Directive

Our reference:	LIF-AML-13-032	Date:	14 May 2013
Referring to:	COM(2013) 45 final - 2013/0025 (COD)		
Related documents:			
Contact person:	Frederik Vandenweghe, Policy Advisor, Pensions	E-mail:	vandenweghe@insuranceeurope.eu
Pages:	5	Transparency Register ID	33213703459-54

### 1. General remarks

Insurance Europe welcomes the Commission's proposal for a 4<sup>th</sup> Anti-Money Laundering (AML) Directive, which was published on 5 February 2013.

Insurance Europe is particularly pleased that the specific characteristics of insurance are recognised in the proposal. The insurance sector is a distinct business with its own risk profile, and we therefore welcome the Commission's efforts to properly tailor the proposal, such as the recognition that some terms have a different meaning in insurance as compared to, for example, banking, and that the requirements should be different.

Insurance Europe is also supportive of the prominent role that is foreseen for the risk-based approach (RBA). This fundamental and essential approach will allow insurers to allocate their resources in the most effective way to address identified and prioritised risks in the right order and with the most appropriate response. Although insurance is a relatively low-risk industry compared to other sectors of the financial services industry, insurers are equally committed to contributing to the fight against terrorism financing and money-laundering. This participation can, however, only be effective if the insurance companies' resources are targeting the situations presenting a meaningful risk.

The proposal's definition of a "financial institution" includes those institutions offering life insurance products, but appropriately does not include other types of insurance products, given that they have no investment or cash value. This approach mirrors that of the FATF, and reflects the low money-laundering (ML) and terrorist financing (TF) risk profile of insurance. For this reason, it would be appropriate for the new AML Directive to be even more explicit to indicate that only life insurance products should be included in its scope. This would ensure there is no deviation from this approach at national level.

With this paper, Insurance Europe wishes to share its view on how best to ensure an effective and workable AML regime for insurers in Europe. Specific attention is paid to technical provisions affecting the insurance sector.

## **2. Technical considerations and remarks**

### **Risk-based approach**

The prominent role for the risk-based approach (RBA) is warmly welcomed by the insurance industry. The RBA will help market participants to prioritise and allocate their resources in the most effective way. Similarly, life insurers will be in a position to adjust their approach, based on the relevant country assessment and on their own risk assessment, thereby focusing on those activities that pose a potentially higher money-laundering threat. Insurance Europe therefore stresses that the RBA should be properly implemented at national level.

Indeed, for the RBA to work in practice, it is also important that the supervisory authorities at European and at national level understand and embrace it. In some jurisdictions, this is not always the case, as some authorities feel more comfortable with a more prescriptive “tick the box” approach, which is seen as the way to cover all possible risks of money-laundering. Insurance Europe therefore stresses that the RBA should not remain a concept at global or European level; rather, its application in every member state should ensure that the measures in place to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

Insurance Europe also welcomes the call in the proposal (article 43 (2)) for member states to ensure that feedback on the effectiveness of and follow-up to suspicious transaction reports is provided. Such feedback by the authorities can provide useful indicators for companies’ own risk assessment. Currently the Financial Intelligence Units (FIUs) provide only very limited feedback often due to legal restrictions.

### **Customer Due Diligence (CDD)**

#### Process

Insurance Europe is concerned that insufficient clarification is given on the guidelines to be developed by EBA, EIOPA and ESMA concerning which risk factors and measures need to be taken into consideration when applying simplified (SDD) or enhanced CDD (EDD). Without further indication it is difficult to assess what the impact of the proposal will be for the life insurance sector.

Furthermore, Insurance Europe is very concerned that the ESA’s guidance for EDD and SDD is currently scheduled to take place during the member state implementation period for the AML Directive, with the same implementation deadline. In the absence of any ESA guidelines prior to the implementation deadline, harmonisation between member states in the approach to SDD and EDD cannot be guaranteed. In such a case, the proposal would fall short of the Commission’s stated objective of harmonisation across the EU.

Insurance Europe would therefore recommend either having a shorter deadline for the ESAs to provide their guidelines or prolonging the implementation period of the Directive. We also believe that more effective implementation of ESA guidelines would be achieved if they are developed in close consultation with all stakeholders, including the insurance sector.

#### Substance

Insurance Europe believes that the risk assessment carried out by a financial institution should be based on a matrix, assessing combined risk factors (product, delivery channel, client profile and geographic location risks). For example, where high-risk customers purchase a very low or no-risk product, life insurers should not be required to apply a set of prescribed enhanced CDD measures (ie higher requirements). Insurance Europe suggests providing clarification that the guidelines to be developed by the ESAs will follow the RBA, taking into account combined risk factors.

Insurance Europe would like to highlight that simplified CDD measures are applied following a national or internal risk assessment with the conclusion that there is low or no money-laundering risk for certain life insurance products or product characteristics. However, the wording — as in the Commission’s proposal — can be understood to imply that the application of simplified CDD should be done on a case-by-case basis taking into account the customer relationship or the transaction in the risk assessment. As such, there would be no more differentiation between simplified CDD and normal CDD measures.

In addition, since life insurance products vary in the different national systems, the determination of low-risk products should be conducted at national level, on the basis of national specificities. Insurance Europe



therefore believes that a national risk assessment should form the basis of SDD measures, rather than the customer relationship or transaction.

However, Insurance Europe supports the inclusion of a sub-topic on CDD for beneficiaries of life insurance policies, which provides a clear indication that the verification of the identity of the beneficiary should occur at the time of the pay-out. This correctly reflects the fact that the beneficiary nominated in a life insurance policy, which in many countries is not mandatory or could change multiple times during the duration of the policy, only plays a role if the insured event occurs, for example in the case of the death of the insured. The use of standardised beneficiary assignments (children, legal heirs, etc.) is common. In other words, the beneficiary plays no role at the conclusion of the contract and during the duration of the life insurance contract, but only if the insured event occurs.

Consequently, Insurance Europe believes a life insurance company should not fall under the requirement to identify the beneficiary or the beneficial owner of the beneficiary until the moment of pay-out.

### **Politically Exposed Persons (PEPs)**

Insurance Europe welcomes the wording of article 20, which states that life insurance companies should take "reasonable measures" to determine whether the beneficiaries of a life insurance policy are PEPs at the latest at the time of pay-out. Insurance Europe understands "reasonable measures" as proportionate to the level of risk, following a risk-based approach.

However, it is still unclear what is expected of financial institutions in identifying PEPs, and in particular what types of persons fall under "close associates", given the very wide scope of the notion of PEPs. Insurance Europe would therefore welcome the development of an international list to help identify foreign and domestic PEPs, or a confirmation that reliance on a generally used commercial list is acceptable. We would also welcome clarification on certain terms used to define PEPs, notably "third country", "middle ranking or junior officials", "sufficient seniority" and "sufficient knowledge".

Furthermore, following a risk-based approach, the "client profile" should be only one of the risk factors, rather than the sole determining factor in the risk-assessment process. As such, PEPs should not be deemed to pose a higher risk without a proper evaluation. For example, we believe a family member of a foreign PEP coming from a low risk country — such as Japan — should not automatically be considered to pose a high risk of money-laundering when buying a low-value life insurance product, when the person would, for example, be studying or working in Europe. Therefore, we believe that merely regarding a person as a foreign PEP should not be the sole risk factor considered, but one of several assessments carried out.

### **Non-face-to-face business**

Insurance Europe suggests defining (non-)face-to-face business to avoid the misinterpretation of intermediated businesses. A clear definition would avoid situations in which intermediated businesses, such as the insurance sector, would be potentially automatically considered at a higher risk of money-laundering. It is our understanding that non-face-to-face business covers sales through channels with no direct human interaction, such as the internet and telemarketing. Contrary to this, the use of intermediaries, such as agents, brokers or banks, does not automatically lead to an increase in risk and is not regarded as non-face-to-face business. Therefore, where a provider receives business via an intermediary, who has seen and verified the client "face-to-face", the relationship with the provider should also be classified as face-to-face.

Furthermore, Insurance Europe suggests providing clarification on how to treat real non-face-to-face business, such as telemarketing or sales through the internet, in light of the AML provisions. In this regard, we would also like to highlight that not all non-face-to-face business should be considered as at high risk of money-laundering, but instead should be only one of the risk factors to take into account to decide on the risk classification. For example, low-risk products bought online by a low-risk customer should not automatically be classified as high risk.

### **Beneficiary of a life insurance policy**

Insurance Europe welcomes the proposal's specific reference to the "beneficiary of a life insurance policy", correctly reflecting the fact that the beneficiary can be either designated or nominated. Furthermore, the proposal acknowledges that the designated beneficiary can change multiple times during the duration of the policy, while the beneficiary only plays a role if the insured event occurs, for example in the case of the death of the insured. In other words, the beneficiary plays no role at the conclusion of the life insurance contract and during the duration of the contract, but only if the insured event occurs.



Insurance Europe understands under article 11 (5) that if the beneficiary is nominated by name, only the name of the person should be taken when opening a contract. In the case that the beneficiary is designated and therefore not fixed, it is the responsibility of the insurer to ensure that he can identify these beneficiaries at the time of the pay-out. In both cases, verification of and CDD on the beneficiary will be performed only at the time of the pay-out.

However, Insurance Europe regrets that, in contrast to the FATF recommendations, the Commission's proposal does not contain a definition of the term "life insurance beneficiary". Indeed, depending on the context, the meaning of the term "beneficiary" can differ. Insurance Europe therefore supports the definition of a life insurance beneficiary as put forward by the FATF recommendations, highlighting that "in the context of a life insurance or another investment linked insurance policy, a beneficiary is the natural or legal person, or a legal arrangement, or the category of persons, who will be paid the policy proceeds when/if an insured event occurs, which is covered by the policy".

### **Beneficial ownership**

Insurance Europe welcomes the fact that, under the Commission's proposal, member states should ensure that corporate or legal entities established within their territory obtain adequate, accurate and current information on their beneficial ownership, and that this information should be accessible in a timely manner. This will help financial institutions in identifying the beneficial owner of a company. However, Insurance Europe would welcome further guidance on how this information should be verified.

Furthermore, Insurance Europe welcomes the provisions in article 12 (4) noting that where life insurance companies are not able to comply with the identification of the beneficial owner, they should "consider" closing the business relationship, rather than obliging them to do so (*"shall" close the business relationship*), as was previously the case. Indeed, in an insurance context it is not always legally possible to terminate a policy contract.

Finally, as regards article 12 (1), Insurance Europe highlights that in the context of a life insurance policy, it should be ensured that verification of the beneficial owner needs to be done only at the time of the pay-out.

### **Third-party reliance**

Insurance Europe would be supportive of further clarity on the roles and responsibilities in cases of third-party reliance. It is common for insurance companies to rely on certain information from third parties when conducting CDD checks. However, Insurance Europe believes further clarity on the roles and responsibilities of the respective parties in an exchange of information with third parties is needed. In particular, Insurance Europe believes it should be clear what type of information should be disclosed by the third parties, and how liability for the information is determined. Unfortunately, the Directive is very vague on this point.

### **Tax crimes**

Regarding tax crimes, Insurance Europe believes it should be explicitly highlighted, that preventing and combating tax crime is the responsibility of the competent tax authorities, and not of life insurers. This should, however, not mean that there is no obligation on the life insurer to disclose information about possible tax crimes to FIUs.

Furthermore, Insurance Europe wishes to point to the fine line between tax avoidance and tax evasion. In this respect, Insurance Europe requests additional guidance on what is expected from the life insurance sector with regard to "tax crimes", to avoid putting too much burden on financial institutions.

### **Sanctions**

Insurance Europe believes that the sanctions as addressed in the proposal are very high, especially in cases where the life insurance company has acted in good faith and without any court decision explicitly referring to a serious mistake by the company in question. Insurance Europe therefore suggests that the sanctions should be proportionate.

### **Data protection**

Insurance Europe is pleased that the Commission's proposal would allow obliged entities to apply AML/CTF requirements beyond obligations under the data protection regulation. However, with the data protection



regulation still under discussion, compatibility of the requirements under both pieces of legislation is still to be determined.

In order to protect both the personal data of the client and the employees of the firm, it is essential in the insurance sector to have a clear and proportionate approach to the information requested, in particular regarding requirements for risk assessment and risk monitoring, and the privacy of the collected data.

Particularly with regard to intra-group sharing of information, data retention, and information-gathering, there is a risk of incoherence between the two proposals. Life insurance companies have to comply with AML provisions, and we believe that data protection rules should not prevent them from doing so.

Insurance Europe therefore suggests including a list of measures that obliged entities are allowed to perform beyond the requirements in the data protection regulation, in case there is incompatibility between the two sets of requirements.

### **Terrorist financing**

Insurance Europe wishes to stress that there are limited specific indicators to assist life insurers in the detection of terrorist financing activities. Therefore, Insurance Europe considers it appropriate to further increase understanding of how the life insurance sector can be exposed to terrorist financing activities, and how information can be used effectively to combat terrorism.

Indeed, in some cases, the characteristics of ML and TF are different. For example, in ML the crime will precede the financial transaction, whereas in TF the financial transaction will often precede the crime.

### **Remarks on Annex II & III**

With regard to annex II, Insurance Europe would like to highlight the following elements requiring further examination:

- ⇒ Regarding annex II 2 (b), it should be noted that many pension schemes have surrender options. However, access to such options can be restricted, for example due to tax reductions. Therefore Insurance Europe believes that "no surrender options" does not sufficiently take into consideration the limited access.
- ⇒ Other low-risk life insurance products should also be considered as lower risk, for example critical illness or whole life insurance products. However, Insurance Europe considers it more valid to refer to product features rather than to products themselves.
- ⇒ It is unclear what is meant by "a member's interest" in annex II 2 (c). Furthermore, Insurance Europe wishes to note that the wording under "by way of deducting from wages" would mean that only employee contributions would be seen as lower risk, while possible employer contributions would not. This would cause legal uncertainty when retirement schemes consist of both employee and employer contributions. Focus should therefore rather be on the "total salary package".

Insurance Europe suggests excluding "new products" from the factors that might lead to higher risk under Annex III 2 (e). Product risks should follow a thorough AML risk assessment before the risk classification is determined.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of almost €1 100bn, employ nearly one million people and invest around €7 700bn in the economy.

[www.insuranceeurope.eu](http://www.insuranceeurope.eu)