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## BVGB Position Paper on the revision of European AML rules

### Introduction

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The German Association of Anti-Money Laundering Reporting Officers (*Bundesverband der Geldwäschebeauftragten e.V.*, BVGB) represents and promotes the interests of money laundering reporting officers (MLROs) from all obligated sectors, *inter alia* real estate, valuable goods dealers (art, motor vehicles etc), financial services, insurance companies and intermediaries, compliance service providers and any other obligated companies.

**BVGB stands for transparency, legal certainty, further harmonisation as well as standardisation and more effective enforcement.** Anti-money laundering (AML) requires clear and appropriate regulation, which is why we welcome the pending proposals at both European and national level.

Our association very much welcomes the European Commission's efforts in reviewing and updating the EU regulatory framework tackling money laundering and the financing of terrorism, as laid down in the Action Plan of May 2020. We would therefore like to share our members' priorities as regards the upcoming legislative proposal.

Below, you will find our comments on the various aspects of both current and future legislation that we deem relevant:

### BVGB's position

#### 1. EU-wide harmonisation

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The EU landscape of national AML legislation and implementation remains fragmented, hindering its effectiveness. **BVGB therefore strongly supports the Commission's plans of turning certain parts of the current AML Directives (AMLD) into directly applicable provisions under a Regulation.**

Full harmonisation is crucial for effectively combatting money laundering on a European scale. Such harmonisation should specifically apply to

- provisions laying down the list and specifics of obliged entities,
- customer due diligence requirements,
- reporting obligations
- provisions on Beneficial Ownership Registers (UBOs) and central bank account mechanisms
- identifying politically exposed persons, and,
- defining the structure and tasks of supervision entities and the tasks of Financial Intelligence Unit (FIUs).

We would also like to emphasize that **harmonisation efforts should include the financial as well as non-financial sectors.** As identified by the Supranational Risk Assessment 2019, there are 47 products and services potentially vulnerable to AML. It therefore only seems to be logical that harmonised AML legislation applies across sectors.

Finally, the key role for technology in this regard should be considered. The more harmonised, prescriptive and standardised AML rules and their application become throughout the EU, the more the development of digital compliance technology and tools will be enabled, providing for a

seamless, robust and reliable application throughout the EU. This would result in a streamlining of processes which are currently unnecessarily lengthy and bureaucratic. Taking the example of UBOs, the burden for obliged entities could be significantly lowered by introducing a standardized electronic interface connection (API) across the EU and standardized digital and legal information that can be retrieved through and from all national registers based on one consensual set of data. We welcome the Commission's ambition to provide a future proof regulatory framework to support an EU-wide, simple, trusted and secure system to manage identities in the digital space, covering identification, authentication and the provision of attributes, credentials and attestations.

## 2. More effective enforcement and EU wide supervision

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BVGB welcomes the **establishment** of an authority on EU level to address shortcomings in national AML supervision in the financial and non-financial sectors. We **support a combination of direct supervisory powers for some types of obliged entities, to be carried out in coordination with Member States**, covering all risk areas from the outset. While national supervisors should stay in charge of day-to-day business, the EU-level authority would ensure harmonised, thus coherent, application of rules and effective cross-border information exchange.

Especially in Germany, AML supervision is very scattered. These circumstances force obliged entities to deal with various bodies and results in overly complex processes as well as unnecessary uncertainty regarding competencies.

Our sector would benefit immensely from a **greater visibility of EU level enforcement activities as well as an EU level encouragement of clearer communication by Member States authorities**. For example: The German FIU currently publishes very little information about measures regarding AML enforcement. The centralised publication of decisions taken by decentralised supervision authorities would however seriously increase the awareness for AML policies and thereby reinforce respective compliance.

Finally, for reasons of legal certainty, supervision in the non-financial sector must be seriously improved and harmonised, considering that monitoring and reporting activities among non-financial sector entities are based on different federal behaviour.

Furthermore, enforcement needs to be enhanced. As outlined in a recent report by the German Federal Court of Auditors (*Bundesrechnungshof*), only 5 percent of the estimated suspected cases of money laundering in 2019 were effectively reported to the competent authority – although the number of obliged entities within the NFS exceeds those from the financial sector by far.

Finally, it is of utmost importance to have this regulatory imbalance between the financial and non-financial sectors addressed in a sustainable manner.

## 3. More efficient rules for Financial Intelligence Units (FIUs)

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Particular attention should be given to Financial Intelligence Units. BVGB therefore very much supports the focus on “establishing a support and cooperation mechanism for FIUs” in the 2020 Action Plan. A clear definition as regards the structure and tasks of FIUs would contribute significantly to a more effective AML framework. Considering the practical experience of our members, we consider the current FIU reporting system as rather poor as well as ineffective. The response quality is unsatisfactory, and turnaround time unnecessarily long, when it comes to

assessing the quality of suspicious transaction. As a result, obliged entities remain uninformed and will continue to grope in the dark – instead of improving their systems.

**BVGB strongly encourages policy makers to disincentivise FIUs' reliance on archaic manual processes in favour of more future proof, standardised and digital procedures.** Serious improvement could e.g., be achieved by ensuring that APIs become standard for every single FIU. In addition to any specification of set-up and task areas of FIUs, we further recommend enhancing the cooperation between different national FIUs, preferably by establishing a coordination mechanism. Such mechanism would enable central reporting units within Member States to jointly analyse cross-border cases, improving the effectiveness of AML/CFT policies with respect to their European scope.

In our opinion, a supervisory authority in charge of managing and supporting international, inter-institutional cooperation is best suited for this task as elaborated above.

#### 4. Harmonisation and transparency of beneficial ownership (UBO) register

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Further harmonisation and standardisation of UBO register requirements is urgently needed as it facilitates their inter-connection and hence enhances their usability, notably considering the international dimension of money laundering. There are two key issues we would like to highlight as regards the revision of UBO specific rules:

**Necessity to have high quality and complete data in all UBO registers.**

The current situation with respect to completeness of information in transparency registers is not always satisfactory. In Germany, companies only have to provide information on its beneficial owners in the transparency register, if such information is not available from other public registers, i.e. the commercial registers. Obtaining the relevant information can thus be cumbersome and interpretation of the data in complex holding structures does require expert knowledge in some cases and a good understanding of the member states' legal framework. There clearly is a need for improvement in the quality of data, e.g., in terms of completeness, accuracy and timeliness. Required data needs to be standardised across the EU and verified by public authorities since obliged entities must be enabled to rely on the data obtained. We therefore encourage the Commission to establish a close monitoring mechanism over the setting-up and operation of beneficial ownership registers, especially regarding the delivery on requests and the quality of data. It is imperative that any liability for the accurateness and timeliness of the data provided by the entities obliged to register must not be privatised as we believe that verification is a public task.

While the situation in Germany may improve with a new law – finally transposing the respective requirements of Directive (EU) 2018/843 and transforming the existing transparency register into a full register containing all relevant data - it would be very helpful for the work of obliged entities and MLROs, if one complete register on beneficial ownership with all relevant data was available in all EU member states, containing information in a standardised form. As such, it should be accessible for all obliged entities and, if applicable, third parties which these entities rely upon to meet their customer due diligence requirements.

**Necessity of access by internal MLROs and outsourced service providers.**

Our main concerns centre around current application of access for third parties and the present German proposal restricting access to a future digital interface for financial institutions, insurers and

notaries. Effective AML implementation requires a swift and diligent handling of all KYC requirements. Obligated entities may find themselves in a situation in which their business partners are not willing to submit essential/legally required information, often to the detriment of AML compliance.

While large financial institutions and other obliged entities that have a lot of exposure to critical transactions will be able to establish the necessary technical tools and APIs to complete the required checks in a timely manner on their own, other obliged entities may lack the resource to do so. Thus, many obliged entities make use of external, third party service providers in order to cope with their legal obligation. We therefore encourage that respective providers are given necessary access levels in order to further contribute to the effectiveness of the AML framework. We are aware that careful balance needs to be struck between data protection in the interest of registered individuals, on one side, and transparency requirements as outlined already in 4AMLD and 5AMLD, on the other.

We believe that such concerns can be addressed by establishing certain minimum requirements to be fulfilled, e.g., by third party AML service providers, when being granted access to the registers:

1. **Access should be limited to third party providers listed under Section 4 of Directive (EU) 2015/849** and certain groups of professions that require a minimum qualification and that are subject to professional supervision. This should at least include public notaries, lawyers, certified compliance firms and accounting firms.
2. The **legitimate interest should be defined tightly**, by linking access rights to e.g., power of attorney on behalf of obliged entities, to be notified with the competent authority.
3. **Digital access rights should be made subject to providing evidence of a high level of knowledge and proven qualification in the field of AML.** Specialised training on AML matters and certification thereof could be made a condition for the right to regularly access UBO registers.

## About us

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BVGB, the German Association of Anti-Money Laundering Reporting Officers (*Bundesverband der Geldwäschebeauftragten e.V.*) represents the interests of Money Laundering Reporting Officers (MLROs) in companies or as individual members. Established in 2020, our double-digit membership covers various sectors, such as real estate companies, the arts sector, goods and motor vehicle dealers and compliance service providers. The aim of our association is to strengthen the development of our professional field while assisting our members in effectively fulfilling their legal obligations under Anti-Money Laundering legislation, e.g., when confronted with the specific requirements, legal foundations and continuous policy developments.

In addition, BVGB provides a professional network for MLROs and acts as their voice vis-à-vis regulators. Taking into consideration the special sensitivity and importance of the AML topic, BVGB further seeks to provide crucial expert knowledge and first-hand insights into practical implementation of respective policies. In light of the diversity of our membership, we aspire to provide a platform for exchange and a forum for dialogue. Hence, one of the BVGB's main tasks is to initiate an exchange with the legislator and to highlight our interests in a constructive dialogue.