Commission of the Episcopates
of the European Union

Public consultation on an action plan for a comprehensive Union policy on preventing money laundering and terrorist financing

A contribution
by the
Secretariat of COMECE
(Commission of the Episcopates of the European Union)

1. Introductory remarks

The COMECE Secretariat has been following the evolution of EU legislation and policies on preventing money laundering and terrorist financing during the last few years and maintained a **dialogue with the European Commission** services in this regard, especially through its Legal Affairs Commission.

The main point that emerged within such expert discussions is that, while there is a clear need for effective policies and instruments to fight against this phenomenon, it is essential to **avoid unwanted consequences for not-for-profit actors, including Churches and charitable organisations**.

In the context of this public consultation, the COMECE Secretariat is pleased to submit some comments and suggestions, also based on the **exchanges held at its Legal Affairs Commission**.

Considering the impact on the Church, charities and benevolent organisations, the COMECE Secretariat would consider it important to **deepen and carry forward a dialogue** on these specific points with the European Commission.

2. Unwanted negative impact on Churches and not-for-profit organisations

In general, the 5th Anti-Money Laundering Directive is contributing to strengthening national actions against the phenomenon. We fully support the statement made by Commission Executive Vice-President Dombrovskis at the European Parliament plenary session on 8 July 2020, that ***"Our rules should not make life harder for honest operators"***. The general thrust of the recent **Action Plan** towards making EU rules in this domain even more effective is **to be welcomed**.

However, we have noted that some of the current EU provisions seem to have had an **undesirable negative impact on not-for-profit actors, including Churches, also as a consequence of their national implementation**.

These concerns have been correctly addressed in some countries, for instance in **The United Kingdom**, where for the moment **charities have been exempted** from the relevant provisions, being considered as low-risk.

On the basis of these provisions parishes, dioceses, religious orders are also not affected by national legislation on this matter.

On the other hand, other national experiences illustrate possible negative consequences of anti-money laundering policies for not-for-profit actors, including Churches.

In the **Netherlands** Ultimate Beneficial Owner (UBO) provisions have raised concerns with regard to **disclosure of personal data of Church board members**. As in other Member States, the relevant national law does not foresee any exemption or tailor-made approach for this case, despite the fact that **sensitive religious data are involved**. Before the adoption of the EU Directive, the general rule in Dutch law was that Church board members' data would not be made available online due to privacy considerations. The new financial transparency requirements have led, at least, to **legal uncertainty** in this regard.

It is crucial to soundly and convincingly **balance transparency with privacy, as well as with autonomy**. EU transparency policies, including those to fight money laundering, should be GDPR-proof. We would encourage the Commission to ensure **strict compliance** with the provisions of the 5th AML Directive that refer to **privacy and personal data**, as well as more generally with Article 8 of the Charter of Fundamental Rights of the EU. When it comes to the impact of these provisions on Churches and religious associations or communities, compliance checks should have as reference points **Art. 17(1) TFEU** (*"The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States"*) **as well as Article 10 of the EU Charter** - concerning the fundamental right to freedom of religion, including its institutional dimension.

As underlined in the COMECE Secretariat contribution to the *Evaluation and review of the General Data Protection Regulation*, **the Catholic Church supports and values protection of personal data**. The Church's understanding of the importance of protection of personal data and of privacy is reflected in its own internal provisions. Furthermore, in the same contribution, appreciation was expressed for the approach taken with the General Data Protection Regulation to strengthen data protection and citizens' rights, while acknowledging that *"The GDPR has undoubtedly contributed to strengthening data protection culture and awareness in the EU at all levels and areas of society"*.

In this context, we note with concern the **tension between the strong safeguards contained in the GDPR** on protection of personal data/privacy, **and obligations to publicly disclose more and more information**, derived inter alia from EU anti-money laundering legislation. This is particularly worrying with regard to Churches and religious organisations, considering that sensitive data (revealing religious beliefs) are at stake in their case. Incidentally, **the GDPR**, with its Articles 9.2, point d and 91, effectively **proves how EU law can and should take into account the specificity of the Church and of religious organisations**.

In case no exemption is foreseen, the solution could be to **ensure** that well-crafted **national-level mechanisms** are introduced **to effectively mask information concerning religious actors**, in relation both to the sensitive religious data involved and to security considerations, possibly with a **special position for such actors within UBO-registers**.

More generally, while encouraging the EU to curb eventual national provisions based on an "aggressive" concept of transparency, we would support the idea of relying on complementary mechanisms e.g. a **sound implementation of**:

1. **Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (Whistleblowers Directive)**;

2. The new **provisions** introduced with the 5th AML Directive, **on ensuring that individuals who report suspicions of money laundering or terrorist financing** internally or to the FIU, **are legally protected** from being exposed to threats, retaliatory or hostile action.

3. Impact on funding of not-for-profit entities

Aside from the data protection considerations, publication of extensive details about sensitive financial information, data, roles and positions **can dissuade/discourage citizens or entities that are interested in making donations and contributions** to Churches, charities and in general to not-for-profit organisations.

This may gravely affect the main sources of funding for these actors' activities, which are often crucial within European societies and beyond **to assist the neediest and most vulnerable ones**.

In our view, the **chilling/deterrent effect some anti-money laundering measures can have on the financial possibilities of entities that work for the common good** has been, until now, not sufficiently addressed.

It is significant that the **European Parliament**, in its Resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing, at Paragraph 4 *"…calls on the Commission to ensure that the implementation of AML/CTF provisions does not lead to national legislation* ***imposing excessive barriers to the activities of civil society organisations"***. **Such concerns** are valid not only for civil society organisations, but also for **Churches and religious associations or communities**.

We are aware that the current option is for a legislative approach that is **"neutral"** with respect to the type or size of organisations. However, from our perspective, there is a need for a framework that prevents any stigmatisation of not-for-profit actors and **takes into account the specificity of single actors**, due to their status under national law or to the fact that they may be affected in a particularly negative manner by certain provisions.

The recent **European Court of Justice judgment C-78/18, *Commission v. Hungary*** also provides indications of interest. While the case presents clear specificities (registration system targeting organisations in receipt of support from abroad) the Court's **cautioning that public disclosure of information and data on persons and their financial support can have a deterrent/dissuasive effect** on such support are pertinent. The same applies to the elements outlined in §§ 105-142 of the judgment with regard to Articles 7, 8 and 12 of the EU Charter.

The case also provides a reminder of how easily anti-money laundering/transparency considerations can be used to justify policies and legislation that may be problematic from the perspective of the EU (and therefore of the vigilance required in this regard).

4. Possible malicious use of anti-money laundering instruments

Anti-money laundering mechanisms that combine open public access to information and an EU-wide coverage - may allow **ill-intentioned individuals to carry out searches based, for instance, on a person's religious affiliation**. Examples of persons who could be negatively impacted by this go from Holocaust survivors, to prominent third-country opposition leaders based in Europe, to asylum seekers and refugees at risk of persecution by actors linked with their country of origin.

In this context, we would support a future strengthening and broadening of new Articles 30.9 and 31.7a of the Directive in defending **beneficial owners that may be exposed to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation**, as well as beneficial owners that are minors or otherwise legally incapable.

Additionally, **national laws across the EU should ensure that the use of special categories of personal data** (in particular: data revealing religious beliefs, racial or ethnic origin, political opinions) **to the purpose of searches in UBO-registers is not allowed**.

5. Interconnection of national UBO-registers

Concerning the planned establishment of an **interconnection between national UBO-registers**, in our view, the **concerns** outlined in paragraphs 2, 3 and 4 of the present contribution are **amplified** by such mechanism, which might allow for the possibility to search centrally for personal information in all the European UBO-systems.

While we recognise the aims, from a **governance** and **transparency vs privacy** point of view, an EU mechanism creating a **close link among all national UBO-registers** entails **issues** to be addressed. The **way in which** concretely **national UBO-registers are to be connected to each other** - considering the relevant **different national conditions, regimes** - poses challenges.

It should also be recalled that in its Resolution of 10 July 2020, the **European Parliament** underlines at Paragraph 5 that **interconnected** and high-quality **registers** of beneficial owners in the Union must ensure **high standards of data protection**.

6. Other relevant elements

In some Member States (e.g. Slovenia, The Netherlands) the way the EU Directive was implemented created **legal uncertainty**, as - in the absence of an exemption - it was not clear **which components of the Church were concerned by the UBO-register**.

For instance, in Slovenia, the question was raised whether only the Catholic Church - as officially registered Church in the Register of Religious Communities - or also all of its parishes and constitutive parts with independent legal personality had to enter the register. The local Church kept contact with national authorities on this matter and registered in the UBO-register only as **Catholic Church, with the President of the relevant Bishops' Conference** as its legal representative.

Where no exemption is foreseen for Churches and religious associations or communities, **targeting registration on** their **national-level UBOs** - as opposed to focusing on the local level as well - appears to be the ideal way to simplify the framework. This benefits not only the actors involved, but also public authorities which may lack the necessary expertise on the specificity of the relevant internal structures.

Finally, we are pleased to take this opportunity to restate the position we expressed in response to the **White Paper on Artificial Intelligence**, according to which the use of **AI** in view of the - desirable - goal of fighting against financial crimes and especially money laundering, must **not lead to a "society of control"**.

COMECE Secretariat
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