

Consultation on the Transposition of 5MLD
Sanctions and Illicit Finance Team (2/27)
HM Treasury
1 Horse Guards Road
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London

10 June 2019

Dear sirs

HM Treasury – Transposition of the Fifth Money Laundering Directive

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

In general, we are concerned to ensure that the transposition of 5MLD is achieved in a proportionate and sensitive way which, while properly adhering to the Directive's requirements, is alive to the implications of ever more prescriptive standards for smaller institutions which are inherently low risk. In an understandable desire to tighten requirements and minimise the risk of financial crime in the UK and across the EU, there is a risk that standards become more prescriptive and less flexible based on the risk presented by the customer base of a particular institution and individual customers within that.

Specifically in relation to credit unions, our members are small deposit-taking institutions, with limited fields of membership tied to specific localities, employers or industries. Their products and services are limited in most cases to savings and loans and due to their bespoke prudential framework, these are limited in terms of the quantum of business that they can conduct with any one member. Similarly, due to their close proximity to their members, credit unions have a knowledge of their membership base which is very intimate and detailed relative to larger deposit-taking institutions.

None of this is to say or suggest that credit unions present no risk of financial crime – on the contrary, we know that they can be particularly vulnerable to low level fraud (particularly internal fraud) and money laundering in relation to low-level criminal enterprise in communities – but the experience of our members leads us to strongly believe that imposing ever more prescriptive requirements and divergences away from the risk-based approach in fact undermines the resource capacity that small institutions have available to engage in meaningful efforts to enhance their works to counter financial crime within their membership base.

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It is this conviction – based on our extensive practical experience of supporting credit unions in the field – which informs our responses to the consultation questions that follow. We have chosen to respond only to those areas that are most directly relevant to credit unions.

Electronic identification processes

We are concerned that whoever provides clarity around the meaning of “secure” and other terms within the Directive in relation to electronic ID verification, it is crucial that minimum requirements of e-ID methods are not set so high as to be out of reach commercially for smaller providers, such as credit unions. The use of electronic ID should be fundamentally based on the risk-based approach and weaker means of electronic ID can be augmented by additional information. Ultimately it should be for each institution to determine the balance of risk in relation to their use of different methods of verifying ID.

National register of bank account ownership

We would like to highlight our significant concern at the cost implications of the proposal for credit unions to participate in the national register of bank account ownership and the poor cost-benefit case that we believe exists for this proposal. Weekly credit union reporting into a national register would be a costly and burdensome exercise for credit unions to engage in and we do not believe it would yield benefits which would justify the cost of doing so.

Because of the low risk that credit unions present, and the restrictions that exist on the services they offer, the nature and extent of money laundering that takes place within credit unions is so limited that the register information provided by credit unions is likely to be rarely accessed. In addition, we believe that it is likely that requiring such submissions of the smallest credit unions in particular is likely to lead to a degradation in the quality of their wider anti-financial crime efforts due to diverted resourcing.

We would therefore suggest that credit unions are excluded from the requirement to participate in the register. At the very least, we would suggest that a size threshold is considered whereby only the largest credit unions are required to submit regular data to a register and below which either credit unions are not required to comply or significantly less frequent reports are submitted (e.g. every 12 months). To support any credit union exclusion, mechanisms could be established for *ad hoc* requests for account holder information to credit unions.

Credit unions, being subject to the full MLD regime as obliged entities, are managing the risk of financial crime on a day-to-day basis and are regulated and supervised by the FCA in relation to this. As such, we believe that this should provide sufficient reassurance in relation to the perceived threat that credit unions might be targeted by criminals and terrorists by dint of their exclusion from the register.

Another consideration in this connection is that while the consultation envisages a weekly reporting system, it should be borne in mind that under PSDII, most large banking institutions are required to establish the Open Banking Directory, which provides a mechanism to create a searchable

database of bank account ownership within participating credit institutions. This is the mechanism that will be used to establish Confirmation of Payee which was recently subject to a consultation by the Payment Systems Regulator. According to that consultation, more than 90% of current accounts reside within the banking groups that cooperate with OBD.

In terms of the data items that are envisaged to be included in the register, we are largely in agreement with the items listed but we do have some concern at the suggestion of passport number or national insurance number being used. In the implementation of GDPR, many credit unions reviewed their data holdings and took a decision to remove NINO holdings for reasons of wishing to minimise the sensitive data held on their members. This was not without pain and the reconfiguration of systems and processes to replace NINO with new identifiers where it was used in processing. It would be a deep irony if a new proposal in relation to money laundering were to create a requirement to collect NINOs going forward for law enforcement purposes so soon after data protection principles suggested it to be good practice not to hold it.

I would be very happy to discuss this feedback further, should you wish.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'm. Bland'. The signature is written in a cursive style with a large, sweeping flourish at the end.

Matt Bland
Head of Policy & Communication