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Subject: Accountancy Europe general feedback on the EC SNRA in relation to the services provided by accountants, auditors, advisors, and tax advisors

We believe some further enhancements to the SNRA would be helpful to ensure it provides a more accurate understanding of the risks landscape. Below we include our preliminary general feedback.

GENERAL OBSERVATIONS

The SNRA document covers an extensive range of risks and sectors; however, it does not seem to provide the appropriate level of detail when it comes to the specificities of each sector / profession. We would like to see more clarity on the key risks per the sector. In particular, the document does not take into account some of the mitigations' mechanisms already in place e.g. monitoring and risk management mechanisms. This could include also matters such as regulatory oversight, internal risk assessments and customer due diligence.

As the SNRA is used to inform national risk assessments, supervisory risk assessments and firms' own risk assessments, specificity is absolutely critical so that the greatest resource can be focused on the areas and services of greatest risk. Generic statements on high risks do not help improve risk awareness. It would be useful to have some examples or context of these risks.

THREAT/VULNERABILITY

TERRORIST FINANCING

The document in this part seems to conflate terrorist financing (TF) with money laundering (ML). TF and ML have differences in the way they operate.

When looking specifically into TF, we can distinguish two different types of terrorist financing. There is the funding of terrorism, such as the recent “lone wolf” attacks. These are mainly self-funded or may abuse social security benefits, student funding or similar as the outlay involved is low (further references and examples about the sources of TF can be found in the following link). Then there is another type of terrorist financing which relates to terrorist organisations which are more established and operate like crime gangs to fund their activities; this is similar to money laundering. These two terrorist financing types need to be better differentiated and explained. In addition, it would be helpful to understand whether this is a European wide issue or whether there are particular areas of TF risk.

We acknowledge that TF can also involve risks for the accountancy profession. Some of the national risks assessments have also indicated that e.g. the German national risk assessment rates terrorist financing as medium low. Nevertheless, TF needs to be further distinguished and assessed on the basis of the forms it can take. Not all forms of TF activities necessarily require the services of an accountant. We would like to see more evidence from the Commission on how they have reached this level of threat (currently estimated as level 3).

In the document, it appears that all types of TF are brought in together and thus we would like to ask the Commission to indicate specifically what type of activities it is believed the accountancy profession is involved into that equal to significant risks. A greater level of specificity as to the nature of the TF threat to the profession will be of benefit as it will allow the profession to adapt its risk assessments and procedures to mitigate that risk.

THREAT

MONEY LAUNDERING

The current assessment includes a number of broad statements about the attractiveness of the services particularly of tax advisers in setting up corporate structures, designing accounting systems etc. This needs to be supported by specific data at where the risks lie – i.e. if these are large firms, small firms, firms in particular territories. Whilst we can see that organised crime gangs will find these services attractive, understanding if this is a general issue or localised would be helpful.

RE reference: “*some sectoral supervisory bodies are still not adequately equipped to detect this kind of abuse*”. This seems like a very localised issue rather than an issue that applies to all accountants.

RE: “*Tax advisors' services are considered useful for setting up money laundering schemes because they are needed for certain types of activities and/or because access to specialised tax expertise and skills may help with the laundering of the proceeds of crime. Access to tax advisors' legal services is quite easy and does not require specific competences or expertise.*” We query what is meant by access to tax advisors’ legal services not requiring specific competencies or expertise. Accountants who are members of a professional body are required to be competent and experienced in all types of services they provide, and their professional ethical requirements would apply regardless of the type of work performed.

RE reference “*There is also evidence that some criminals seek to co-opt and knowingly involve tax advisors in their money laundering schemes.*”: in this as well as in other instances the document refers to issues that seem to be rather local (in specific Member States or jurisdictions). We would like to ask the Commission to provide more data that support this statement, so it is clear how prevalent such concerns are.

In some jurisdictions both accountancy services and tax advisory services can be provided without being regulated and without the demonstration of any expertise or qualification (non-registered professionals who are not members of a professional body). This practice can significantly increase the ML risks and make mitigation harder. We believe that this factor should be taken into account by the Commission in this assessment.

RE reference “*Professionals can be involved in the laundering process to various degrees. They can be consulted for advice on how to circumvent specific legal frameworks and how to avoid triggering red flags put in place by banking institutions.*” (p.178). Usually, accountants do not provide legal advice, which is the lawyers’ domain. If this concerns tax advice, professionals who are bound by the codes of ethics have an obligation to work within the boundaries of law.

As regards the SNRA indication that - professionals can be consulted for advice on how to avoid triggering red flags put in place by banking institutions – this reads like an issue that applies to the whole profession. This statement needs to be supported by further evidence and examples to understand on what basis the Commission believes this is accurate. In our experience, it is the contrary which is true - trying to circumvent legal frameworks or trying to avoid triggering red flags would be

treated as a red flag by professional accountants and they would likely cease to act for such a client and possibly report it to the local FIU.

There are specific types of services provided by accountants, auditors and tax advisors that may create vulnerabilities such as: setting up corporate structures, accounting systems design, control frameworks, bookkeeping services, etc.

We would like to encourage the Commission to look into sectors' specificities and share concrete examples indicating the areas where things can go wrong. For example, the German National Risk Assessment includes a specific example of the risk – “a notable money laundering risk in this sector is seen in connection with trust and escrow accounts and requires special vigilance (also, and particularly, in connection with payments in cash and payments from abroad/ high-risk jurisdictions)”.

Overall, we believe that the accountancy profession has an organisational framework, regulation, monitoring and controls in place. There are areas where the profession is aware of the improvements needed and may be less aware of others. In many jurisdictions, the interaction between law enforcement and the accountancy profession is rather limited e.g. there are strong links with the financial sector but not with Designated Non-Financial Businesses and Professions. There needs to be a formalised risk rating approach e.g. likelihood, consequences, mitigation, net risk.

MONEY LAUNDERING

RISK EXPOSURE AND RISK AWARENESS

Professional accountants who are members of professional bodies are obliged to abide by ethical codes. As part of a professional body they have opportunities to enhance their knowledge of AML through education and training as well as discussions on practical experience. This helps enhance the quality of AML and CFT.

It is important to understand where the risks in each sector lie and what red flags may apply. The professionals may understand their client's business model but may not recognise red flags to be able to investigate this further. To better prevent money laundering, an obliged entity should have a good understanding of the risks that could arise in the sectors their clients operate in.

This can be facilitated with exchanges/feedback with/from FIUs, other obliged entities, financial services providers or legal enforcement agencies to be better aware of the structures where money laundering or terrorism takes place, what trends, indicators, recent developments are. If there is no knowledge or awareness of these issues, it will be very difficult to detect whether your client is involved in ML or TF.

MITIGATING MEASURES

FOR MEMBER STATES:

As part of the mitigating measures to be undertaken by Member States, the SNRA document notes: *“Member States should provide guidance on risk factors arising from transactions involving external accountants and tax advisors.”* We find this reference very generic which leaves a lot of room for interpretation and potential inconsistencies. The document needs to be more specific on possible risks factors involved. We would like to ask for more clarifications by the Commission on this.

RE reference *“Encourage a better understanding among external auditors, external accountants and tax advisors on how to interpret and apply the legal privilege. Member States should issue guidance on implementing the legal privilege – how to split between legal services subject to the very essence of legal privilege and other legal services not subject to legal privilege when provided to the same client.”*: This part does not seem to fit in the section dealing with accountancy sector as legal privilege applies primarily to lawyers, and in some limited circumstances tax advisors may benefit from legal privilege.

CONSISTENCY ISSUES

We also note that there is some inconsistency as to the risks that are considered under the specific “services provided by accountants, auditors, advisors, and tax advisors”. Section a) (p. 179) on **risk exposure** starts with tax advisors. However, this section seems to omit accountants, auditors and advisors. Section b) on **risk awareness** starts with accountants, auditors and tax advisors; nothing is mentioned on advisors (advisory services by accountants and auditors).

NATIONAL EXAMPLES

In reference to our earlier remark that the SNRA seems to overgeneralise the risks that may be more local, we have included below in a non-exhaustive way several examples of instances of where the SNRA points are not applicable from the national perspective:

On p 180 section c) on legal framework and controls suggests in the first paragraph that all the professionals act on behalf of and for clients in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning:

1. buying and selling of real property or business entities;
2. managing of client money, securities or other assets;
3. opening or management of bank, savings or securities accounts;
4. organisation of contributions necessary for the creation, operation or management of companies; and
5. creation, operation or management of trusts, companies, foundations, or similar structures.

We would like to point out this is not the case in the Netherlands, or in Cyprus. In Cyprus, for example, the above services are defined as ‘Administrative Services’ regulated under the Law Regulating Companies Providing Administrative Services and Other Matters L.96(I)/2012, which requires professionals offering such services to be registered, licensed and supervised. Not all accounting professionals are allowed to provide such services. Similarly, in the UK, only certain professionals who have additional regulation and qualifications may be involved for tax advice and carry out 1, 2 and 3 of those services. Some accountants may provide services 4 and 5.

In Germany accountants are not allowed to carry out all the listed activities. See paragraph 2 of the Wirtschaftsprüferordnung, indicating that accountants can give tax advice and represent their clients in tax affairs. They are also allowed to work as a judge in matters of economic management, to give advice in economic matters and keep others interests and to provide escrow services.

In the second paragraph: “*Nevertheless, when specific advice is sought on irregular or one-time transactions, the professional may carry out their task without having a full understanding of their customer’s financial situation*”. For accountants and auditors in the Netherlands and in Germany, the EC is invited to show evidence.

Further in the same paragraph: ‘This has an impact on their level of suspicious transaction reporting, which is still quite low but better than lawyers. For STRs or UTRs from Dutch accountants and auditors this does not apply.

Relatively, compared with other jurisdictions, the Dutch accountancy profession report the most unusual transactions, which for a considerable part are declared suspicious by the Dutch FIU. E.g.: While the professional accountants in the UK report approximately 10 000 STRs, the number of UK-members is around 300 000, whereas the number of members in the Netherlands is around 20 000. The accountancy profession in other countries than the Netherlands and the UK report far less STRs or UTRs.

ABOUT ACCOUNTANCY EUROPE

Accountancy Europe unites 50 professional organisations from 35 countries that represent close to **1 million** professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond. Accountancy Europe is in the EU Transparency Register (No 4713568401-18).