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## Project against Economic Crime (PECK)

# Explanatory meetings on Questionnaires for the anti-money laundering/combating the financing of terrorism (AML/CFT) and anti-corruption (AC) components

*11 – 12 July 2012*

## Module 17

### Ongoing supervision and market entry, supervisors, sanctions and money transfer services

*Sections 3.9 to 3.12*

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***CoE Expert***

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### **Section 3.9 Recommendations 23 and 30**

# **Ongoing Supervision and Monitoring and Market Entry**

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### Key players involved for Recommendation 23

- **National policy-makers (for overview of regulatory framework).**
- **Regulatory authorities (for details of objectives, structures, resources and procedures).**
- **Licensing/registration authorities (if different to the regulatory authorities).**
- **Private sector institutions (for their perception of regulatory requirements and procedures).**
- **Professional associations (for industry-wide perspective and training initiatives).**

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### Key Features and Objectives of Recommendation 23

- **There must be competent authorities responsible for supervision, oversight or monitoring of AML/CFT compliance by each sector:– Scope of responsibility may be risk-based.**
- **Market entry procedures to prevent criminals from owning or managing Financial Institutions**
- **Licensing or registration of natural or legal persons providing money or value transfer services – subject to effective compliance monitoring**

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### Competent authorities – What should be considered?

- What is the complexity and quality of the sector that supervisory authorities cover?
- How is the supervisory authority structured to meet its responsibilities?
- How is operational independence maintained?
- How are staff allocated relative to the size and risks of the sector?
- What is the calibre of staff and how are they trained?
- What technical support is provided (e.g. databases, analytical software, inspection manuals)?

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### Market Entry

- Banks, securities firms and insurance companies must be licensed.
- Other institutions must be licensed or registered:
  - Licensing involves a decision-making process
  - Registration involves no qualitative assessment.
- There must be legal or regulatory measures to prevent criminals or associates from owning, controlling or managing institutions.
- Directors/Controllers and senior management of banks, securities firms and insurance companies must be subject to “fit and proper” tests.

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### Market Entry – What should be considered?

- How are applications processed?
- What enquiries are made on controllers and directors?
- How long do authorities have to process applications?
- What rights of appeal exist, and have they been used successfully?
- How many applications are received?
- How many applications are rejected and why?

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### Ongoing Supervision

- Banks, securities firms and insurance companies must be supervised in accordance with relevant “Core Principles”: – An assessment of compliance with the “core principles” is not required.
- Money services businesses must be subject to effective monitoring.
- Other institutions should be subject to supervision or oversight based on risk.
- Distinction between supervision and monitoring or oversight reflects relative degree of intrusiveness.



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### Supervision vs Monitoring / Oversight

- **Supervision:**
  - Requires a continuous programme of measures proactively to assess compliance with obligations.
  - Routine on-site inspections essential.
- **Monitoring/oversight:**
  - Requires at least a process for identifying potential compliance failures through off-site surveillance, risk assessment or targeted visits.
  - Power to go on-site is essential, but need not be routinely applied.
  - Generally a lighter touch.

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### Key Features and Objectives for Recommendation 30

- **Authorities must be supplied with adequate resources (financial, human and technical) to fully and effectively perform their functions in an independent manner**
- **Staff of Competent Authorities should maintain high professional standards and be of high integrity and skills**
- **Staff of Competent Authorities should be provided with adequate AML/CFT Training**

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### Questions for discussion – Sec 3.9 Recs 23 &30 (Supervision)

- Are all financial institutions subject to supervision or monitoring/oversight? Which institutions fall in which category? Are statistics on on-site visits maintained?
- Is there a process for licensing or registration of financial institutions? Which institutions need to be licensed?
- What mechanisms are in place to control market entry?
- Are the supervisory competent authorities adequately resourced? Independence?

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### **Section 3.10 – Recommendation 29**

#### **Supervisors**

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# Key Features and Obligations of Recommendation 29

- **Authorities must have clearly defined powers:**
  - **To conduct inspections.**
  - **To compel production of or to access all documents, records or other information held by the institution – no court order.**
  - **To enforce regulations and apply effective, proportionate, and dissuasive sanctions, where necessary**

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### Ongoing supervision – What is to be considered?

- What do supervisors review?
- Is ongoing supervision applied consistently (e.g. a standard manual)?
- What is the cycle of visits and how is it determined (e.g. fixed schedule or risk-based)?
- What is the output from inspections and how is follow-up action pursued?
- What evidence is there that the programme is actually implemented?
- What are the institutions' views of the effectiveness and value of the supervisory programme?

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### Questions for discussion – Sec 3.10 Rec 29 (Supervisors)

- Is the relevant Competent Authority mandated by law to supervise or monitor financial institutions for AML/CFT compliance? – Or derived from prudential supervision?
- Does the relevant Competent Authority have legal power to undertake off-site and on-site inspections?
- Can the relevant Competent Authority compel the production of or have access to all records relevant to monitoring compliance?
- Does it have adequate powers of enforcement and sanctions against financial institutions? Against their Directors? And against senior management?

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### **Section 3.11 – Recommendation 17**

#### **Sanctions**



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### Key Features and Objectives of Recommendation 17

- **At least one authority must be empowered to apply sanctions, including the supervisory authority.**
- **Sanctions do not need to be specific to AML/CFT, but must be available where only AML/CFT breaches occur – but in principle consider sanctions for prudential purposes separate from AML/CFT.**

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### Nature and scope of sanctions

- **May be criminal, civil or administrative.**
- **Must be effective, proportionate and dissuasive.**
- **Must provide a range of options to fit the severity of the situation, and must include the ability to suspend or withdraw licence.**
- **Sanctions must be available in relation both to financial institutions and to their directors and senior management.**

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### Range of sanctions available (1/2):

- **The methodology (Rec17) provides examples of a range of sanctions:**
  - **Written warnings.**
  - **Orders to comply with specific instructions.**
  - **Mandatory special reports.**
  - **Financial penalties.**
  - **Removal of named officers and employees.**

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### Range of sanctions available (2/2):

- **Restrictions on powers of managers, directors or owners.**
- **Restrictions on business activities.**
- **Direct intervention: conservatorship, suspension, revocation of licence.**
- **Criminal sanctions.**

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### Typical deficiencies for Recommendation 17

- **Insufficient range of sanctions available/applied in practice.**
- **Sanctions rarely applied.**
- **Sanctions not available for senior managers and directors of institutions**

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### Questions for discussion – Sec 3.11 Rec 17 (Sanctions)

- Which authority is empowered by law to impose sanctions for breaches of AML/CFT obligations ?
- What is the full range of sanctions available?
- Is there excessive reliance on sanctions which may be difficult to uphold?
- What is the process for deciding on the application of sanctions?
- Is there clear evidence that authorities apply effective, proportionate and dissuasive sanctions in appropriate cases?
- Do the institutions themselves consider the sanctions to be dissuasive?

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### **Section 3.12 – Special Recommendation VI**

### **Money or Value Transfer Services**

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### Key Features and Objective of SR VI (1/2)

- **Generally applies to free-standing remitters, not to banks that also offer remittances, etc. – for banks and other financial institutions refer to SR VII**
- **Alternative remittances systems are often carried out outside the formal financial system – underground banking, *hawala*.**
- **Such operators must also be included as financial institutions under other relevant Recommendations.**



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### Key Features and Objective of SR VI (1/2)

- **Requirement either to be licensed or registered:**
  - It is not necessary for a due diligence process.
  - Licensing/registration authority must maintain a list of operators and the operators must maintain lists of agents.
- **Other Recommendations must also apply to these operators (R.4-R.11, R.13-R.15, R.21-R.23, SR.VII in particular). Deficiencies under these Recommendations must be reflected in SR.VI .**
- **Effective, proportionate and dissuasive sanctions must apply for non-compliance with AML/CFT obligations.**

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### Questions for discussion – Sec 3.12 SR VI (Alternative Remittances)

- Are there mechanisms in place for the Competent Authorities to identify other alternative remittances systems in operation?
- Is there a requirement to license or register such activities? Which authority has responsibility?
- Does the Competent Authority have a system in place to monitor such activities for AML/CFT purposes?
- Are natural or legal persons carrying out such activities required to maintain lists of their agents?
- Are these made available to the relevant authorities?

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