

Vienna, 11<sup>th</sup> March 2020

## **Konsultation der Europäischen Kommission zur Roadmap „Towards a new comprehensive approach to preventing and combating money laundering and terrorism financing”**

The ÖRAK (Austrian Bar) thanks the European Commission for the opportunity to comment on the Roadmap “Towards a new comprehensive approach to preventing and combating money laundering and terrorism financing”.

The ÖRAK (Austrian Bar) notices that **“central EU mechanisms/bodies to strengthen the preventive framework”** are deemed to be an option for future EU measures.

It is understood that this might be useful with regard to some highly harmonised sectors in the EU, eg in the area of financial services. Regarding the profession of lawyers, however, a EU supervisory body of any sort raises serious concerns. Concerning continuously broadening AML/CTF risk-scenarios, a European supervisory authority would have far-reaching powers which would clearly contravene the independence of the profession.

One of the corner stones of the rule of law are independent lawyers. This independence is guaranteed through the self-regulation of the profession. The bars as self-regulatory bodies ensure protection from undue pressure by third parties such as the state administration while supervising the profession, including abidance to AML/CTF rules.

The principle of self-governance of lawyers is widely recognised. For example, the Council of Europe recommends self-governance and stresses its importance for the independence of the profession.<sup>1</sup> Also, internationally the need for an independent legal profession is clearly recognised. The United Nations acknowledge and endorse the right to an independent legal profession in their „Basic Principles on the Role of Lawyers“: *„(...) adequate protection of the human rights and fundamental freedoms (...) requires that all persons have effective access to legal services provided by an independent legal profession“*.<sup>2</sup>

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<sup>1</sup> Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, especially under point V., adopted by Committee of Ministers, 25 October 2000.

<sup>2</sup> Basic Principles on the Role of Lawyers, para. 24, adopted by 8. United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27.08.-07.09.1990, Havana, Cuba.



It would thus be contrary to the EU's own agenda which seeks to protect and enhance the rule of law in member states to introduce measures which would undermine the independence of lawyers.

With regard to the identified “shortcomings, which call for **more harmonisation at EU level**” the Austrian Bar (ÖRAK) understands that legislative measures in form of a regulation are discussed. At this stage, the Austrian Bar (ÖRAK) does not want to evaluate such an initiative yet. However, it can already be stated that AML/CTF obligations have impacts on numerous sectors, all of them having different features.

With regard to lawyers it would be of utmost importance that features of professional conduct and organisation which are necessary to ensure the rule of law are respected in a horizontal regulation. This concerns especially the core values of independence of lawyers and their bars and professional secrecy.

When thinking about more harmonisation, the principles of good and efficient regulation must be kept in mind. The introduction of new provisions before the citizens had the chance to adopt the last set of provisions and to get used to their duties and obligations is likely to hinder efficiency.

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