



European Insurance and Occupational Pensions Authority
Mr. G. Bernardino
Westhafenplatz 1
60327 FRANKFURT AM MAIN
GERMANY

Our reference
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Subject

ESAs Joint Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector

Dear mr Bernardino,

Last February, we received the Joint Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector, written by the European Supervisory Authorities (ESAs). We were pleasantly surprised by this opinion, because it stresses our own research into the level playing field regarding terrorist financing. We would like to draw your attention to some of the outcomes of our own research, because we think these might be helpful in realising more supervisory convergence and a level playing field.

Background information

The Financial Action Task Force (FATF) reviewed the Dutch AML/CFT legislative framework in 2011 and found some deficiencies. Because of this, the Dutch Ministry of Finance updated some of its guidelines, amongst others, the guidelines on combatting the financing of terrorism (CFT) for insurance companies. After this update, the national bank reviewed ten Dutch insurance companies on their compliance with CFT standards and found some deficiencies: not all Ultimate Beneficial Owners were known, and if they were known at a certain time, the data wasn't structurally monitored. This general conclusion doesn't apply to life insurance though, it is relevant for non-life insurance such as property, car, liability and transport insurance.

Since then, a lot of work was done by our members, in order to comply with all the regulations on preventing terrorist financing. This was partly necessary perhaps, but soon our members started complaining about the difference with surrounding countries and the fact that the balance between effort and risk was being lost. Especially in the market for transport insurance and other B2B insurance, clients easily buy insurance across borders. So if the regulatory regime in other countries is less stringent, this hampers our competitive position.

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Highlights of our own research

Because of this, we asked an independent lawyer in 2016 to compare the regulatory regimes in Belgium, France, Germany and the United Kingdom with the Dutch regime. You can find the report by Finnius lawyers enclosed with this letter. The first conclusion is striking: *the level of harmonization of sanction law related requirements for non-life insurers among the Member States is low.*

This conclusion may mean several things: the regulatory regime in the aforementioned countries needs an update, the regulatory regime in The Netherlands is unnecessarily strict or the truth lies somewhere in the middle. We think the latter is the case.

We recently received a letter by the Belgian national bank to financial institutions, which indicates to us that in Belgium the regulator is updating its regulatory regime. We haven't seen any evidence that the other countries are taking similar steps, we also still think the Belgian situation is still a lot less strict than the Dutch regime.

On the other hand, we think some rules in The Netherlands don't strike the right balance between risk and effort. Overall we think non-life insurance is a low risk product for financing terrorism. The product doesn't allow for accumulating value, so a terrorist would first have to buy an object (e.g. a car), would then have to commit fraud (running the risk of discovery) and would only then receive funds less than or similar to the funds he/she had in the beginning, before buying the object. There is a very limited number of examples of people committing fraud on a larger scale, in order to obtain funds to finance terrorism. We absolutely think companies need to fight the financing of terrorism, but we think there should be a less strict regime for non-life insurance than the one we now have in The Netherlands.

Suggestions for improvement in the EU and in the Netherlands

If we look at recent guidance by our national bank, we already see a good practice emerging: if insurers pay out claims under a certain amount to private clients/Dutch governments, they don't have to check again whether the UBO features on a sanction list. In that case, insurance companies can partly trust the CDD measures done by Dutch banks. We would very much like to see this good practice broadened to all European banks. It is strange that insurance companies can trust CDD measure by Dutch banks, but not CDD measures by banks from other European countries.

We also think that in the case of a payment to e.g. a car repair company, it is very farfetched to ask insurance companies to check whether that company is perhaps owned by a terrorist. Of course this may be the case, but then this should already have been picked up by banks, tax authorities or other authorities. Seeing the low risks non-life insurance products run regarding terrorist financing, we don't think that checking all possible UBO's of all relations is a very productive policy. However, this is exactly what Dutch insurance companies are obliged to do. We fear that a lot of money is being wasted this way, money that insurance customers will have to pay eventually.

The same could be said of the need to check the UBO's of the companies delivering office supplies for example. We think it would be extremely cumbersome for a terrorist to sell printing paper, in order to finance terrorism. It is not impossible, so we don't want to accept all companies blindly, but checking all the UBO's of all the relations is a few steps too far, in our opinion. Another example is that in case a funeral insurance pays out a claim after the insured deceased, the insurance company will have to check the UBO of the company handling the funeral. We think it would be highly unlikely for a terrorist to fund his work in this way. This is proven even further by the fact that the yearly turnout is really small: the number of suspicious transactions our members find is extremely low. They check millions of relations every year, but in 2015 only a handful of suspicious UBO's was found. Mind you: we don't know whether these suspicious UBO's were actually trying to fund



terrorism: the authorities never shared the outcomes of their further investigations with us. For more information on how the Dutch CFT policies differ from the policies in other countries, please see the report by Finnius.

UBO register

Not part of the regulatory review by Finnius, but no less relevant, is the fact that the EU demands member states to set up a national register for Ultimate Beneficial Owners (UBO's). This register is not active yet, so we couldn't review it, but we assume this register might be of very good use to financial companies, who have to check who their clients' UBO's are. The strange thing is though, that is very likely insurance companies won't get full access to this register. In The Netherlands, insurance companies will only get a subset of the data in the register: not enough to be compliant with the demands our national bank makes. This seems like a missed opportunity. We'd like to stress by the way, that in between the extremes of privacy and full transparency, a third way is possible: certain specific industries (e.g. the insurance industry, which is strictly regulated) could be allowed to receive more information on addresses/full dates of birth, for instance behind a password guarded wall.

Conclusions

In conclusion, we ask EIOPA to stimulate regulatory authorities in member states to become more active with regards to sanction law. Apart from that, we ask EIOPA to ensure that Dutch regulators stop pushing the limit of what they ask insurance companies to do. Especially when other countries don't follow suit, this is pointless. And where possible, we'd like some standards to relax: in the case of non-life insurance, we don't see why the UBO's of all business partners would have to be checked. Last but not least we ask you to stress the need for financial institutions to get full access to the UBO register.

We hope we have given you some food for thought and we would be happy to follow up on this letter in person with you or with your colleagues.

Kind regards,

H.L. De Boer