

Overall Report

ASSESSMENT OF THE CONCRETE IMPLEMENTATION AND EFFECTIVE APPLICATION OF THE 4TH ANTI-MONEY LAUNDERING DIRECTIVE IN THE EUROPEAN UNION

Horizontal Review of the Results of EU Member States Assessment Reports

JUST/2018/MARK/PR/CRIM/0166

CONTENTS

GLOSSARY OF ACRONYMS.....	6
EXECUTIVE SUMMARY.....	7
PREFACE.....	12
CHAPTER 1. Overall risk focus of the assessments.....	15
CHAPTER 2. Application of risk assessment, internal control and group policies (Articles 8, 45 and 46) 17	
<i>Article 8</i>	17
<i>Article 45</i>	23
<i>Article 46</i>	26
CHAPTER 3. Application of customer due diligence (CDD) (Articles 13.1, 14, 18.1-18.3, 20-23, 25-29).....	31
Sub-theme (a): General CDD.....	31
<i>Article 13.1</i>	31
<i>Article 14</i>	37
<i>Articles 18.1-18.3 – Enhanced Due Diligence</i>	41
Sub-theme (b): CDD for PEPs – Articles 20-23	45
Sub-theme (c): CDD related to performance by third parties - Articles 25-29.....	50
CHAPTER 4. Application of transparency of beneficial ownership and registration for legal persons (Article 30) and for legal arrangements (Article 31)	53
Sub-theme (a): Transparency of beneficial ownership and registration of legal persons....	53
Sub-theme (b): Transparency of beneficial ownership of legal arrangements	59
CHAPTER 5. Functioning of the FIU (Article 32)	65
CHAPTER 6. Suspicious transaction reporting (Articles 33-36 and 46.2).....	74
<i>Articles 33-35</i>	74
<i>Article 36</i>	77
<i>Article 46.2</i>	77
CHAPTER 7. Application of arrangements in terms of data protection and record retention (Article 40 with AML/CFT relevance).....	85
CHAPTER 8. Application of measures for supervision of financial institutions and designated non-financial businesses and professions (Articles 47 and 48) and sanctions (Articles 58 and 59).....	90
Sub-theme (a): Supervision of financial institutions and designated non-financial businesses and professions	90
<i>Article 47 – Market entry</i>	90
<i>Article 48 – General supervision</i>	97
Sub-theme (b): Sanctions.....	107

CHAPTER 9. Application of national cooperation and coordination requirements (Article 49) (law enforcement agencies excluded)..... 113

Article 49113

CHAPTER 10. Application of measures for international cooperation (Articles 52-57, 45.4, 48.4, 48.5 and 58.5)..... 119

 Sub-theme (a): International cooperation between FIUs..... 119

 Sub-theme (b): International cooperation between supervisors 123

Table of Figures

Figure 1. <i>Typologies of major shortcomings, Article 8 (risk and internal controls)</i>	18
Figure 2. <i>Typologies of limited shortcomings, Article 8 (risk and internal controls)</i>	18
Figure 3. <i>Overall status of the implementation, Article 8 (risk and internal controls)</i>	22
Figure 4. <i>Overall deficiencies and impact, Article 8 (risk and internal controls)</i>	22
Figure 5. <i>Typologies of major deficiencies, Article 45 (group policies)</i>	24
Figure 6. <i>Typologies of limited deficiencies, Article 45 (group policies)</i>	25
Figure 7. <i>Overall status of implementation, Article 45 (group policies)</i>	26
Figure 8. <i>Deficiencies and impact, Article 45 (group policies)</i>	26
Figure 9. <i>Typologies of major deficiencies, Article 46 (training and feedback)</i>	28
Figure 10. <i>Typologies of limited deficiencies, Article 46 (training and feedback)</i>	28
Figure 11. <i>Overall status of implementation, Article 46 (training and feedback)</i>	29
Figure 12. <i>Deficiencies and impact, Article 46 (training and feedback)</i>	30
Figure 13. <i>Typologies of shortcomings, Article 13.1 (Customer due diligence)</i>	32
Figure 14. <i>Additional trends on sectors affected by the deficiencies, Article 13.1 (Customer due diligence)</i>	34
Figure 15. <i>Status of implementation, Article 13.1 (Customer due diligence)</i>	36
Figure 16. <i>Deficiencies and impact, Article 13.1 (Customer due diligence)</i>	36
Figure 17. <i>Typologies of shortcomings, Article 14 (Customer due diligence)</i>	38
Figure 18 and 19. <i>Status of implementation. Deficiencies and impact, Article 14 (Customer due diligence)</i>	40
Figure 20. <i>Typologies of shortcomings, Articles 18.1 – 18.3 (Customer due diligence)</i>	42
Figures 21 and 22. <i>Status of implementation and impact of the deficiencies, Articles 18.1 – 18.3 (Customer due diligence)</i>	45
Figure 23. <i>Typologies of deficiencies, Articles 20-23 (Customer due diligence)</i>	47
Figures 24 and 25. <i>Status of implementation and impact of the shortcomings, Articles 20-23 (Customer due diligence)</i>	49
Figure 26. <i>Deficiencies and their impact, Articles 25-29 (Customer due diligence)</i>	52
Figure 27. <i>Typologies of major deficiencies, Article 30 (Transparency of beneficial ownership)</i>	56
Figure 28. <i>Typologies of limited deficiencies, Article 30 (Transparency of beneficial ownership)</i>	57
Figure 29. <i>Typologies of major deficiencies, Article 31 (Transparency of beneficial ownership)</i>	61
Figure 30. <i>Typologies of limited deficiencies, Article 31 (Transparency of beneficial ownership)</i>	61
Figure 31. <i>Status of implementation, Article 30 (Transparency of beneficial ownership)</i>	62
Figure 32. <i>Deficiencies and impact, Article 30 (Transparency of beneficial ownership)</i>	62
Figure 33. <i>Status of implementation (Member States with specific shortcomings identified with regard to Article 31) (Transparency of beneficial ownership)</i>	63
Figure 34. <i>Deficiencies and impact (specific shortcomings for Article 31) (Transparency of beneficial ownership)</i>	63
Figure 35. <i>Typologies of major deficiencies, Article 32 (Functioning of the FIU)</i>	69
Figure 36. <i>Typologies of limited deficiencies, Article 32 (Functioning of the FIU)</i>	69
Figure 37. <i>Status of Implementation, Article 32 (Functioning of the FIU)</i>	72
Figure 38. <i>Deficiencies and Impact, Article 32 (Functioning of the FIU)</i>	73
Figure 39. <i>Typologies of major deficiencies, Articles 33-35 (Suspicious transaction reporting)</i>	78
Figure 40. <i>Typologies of limited deficiencies, Articles 33-35 (Suspicious transaction reporting)</i>	78
Figure 41. <i>Typologies of major deficiencies, Article 46.2 (Suspicious transaction reporting)</i>	79
Figure 42. <i>Typologies of limited deficiencies, Article 46.2 (Suspicious transaction reporting)</i>	79
Figure 43. <i>Status of implementation, Articles 33-35 (Suspicious transaction reporting)</i>	82
Figure 44. <i>Deficiencies and impact, Articles 33-35 (Suspicious transaction reporting)</i>	82
Figure 45. <i>Status of implementation, Article 36 (Suspicious transaction reporting)</i>	83
Figure 46. <i>Deficiencies and impact, Article 36 (Suspicious transaction reporting)</i>	83
Figure 47. <i>Status of implementation, Article 46.2 (Suspicious transaction reporting)</i>	84
Figure 48. <i>Deficiencies and impact, Article 46.2 (Suspicious transaction reporting)</i>	84

Figure 49. <i>Typologies of deficiencies, Article 40 (Record retention)</i>	86
Figure 50. <i>Additional trends, Article 40 (Record retention)</i>	86
Figure 51. <i>Status of implementation (Record retention)</i>	88
Figure 52. <i>Deficiencies and impact (Record retention)</i>	89
Figure 53. <i>Typologies of deficiencies, Article 47 (Supervision)</i>	91
Figure 54. <i>Additional trends, Article 47 (Supervision)</i>	92
Figure 55 and 56. <i>Status of implementation and impact of deficiencies, Article 47 (Supervision)</i>	96
Figure 57. <i>Typologies of deficiencies, Article 48 (Supervision)</i>	98
Figure 58 and 59. <i>Status of implementation and impact of the deficiencies, Article 48 (Supervision)</i>	105
Figure 60. <i>Additional trends, Article 48 (Supervision)</i>	106
Figure 61. <i>Typologies of deficiencies, Articles 58-59 (Sanctions)</i>	108
Figure 62. <i>Status of implementation, Articles 58-59 (Sanctions)</i>	111
Figure 63. <i>Deficiencies and impact, Articles 58-59 (Sanctions)</i>	112
Figure 64. <i>Typologies of major deficiencies, Article 49 (National cooperation and coordination)</i>	115
Figure 65. <i>Typologies of limited deficiencies, Article 49 (National cooperation and coordination)</i>	116
Figure 66. <i>Status of implementation, Article 49 (National cooperation and coordination)</i>	117
Figure 67. <i>Deficiencies and impact, Article 49 (National cooperation and coordination)</i>	118
Figure 68. <i>Typologies of deficiencies, Articles 52-57 (International cooperation - FIU)</i>	120
Figure 69. <i>Status of implementation, Articles 52-57 (International cooperation - FIU)</i>	122
Figure 70. <i>Deficiencies and impact, Articles 52-57 (International cooperation - FIU)</i>	122
Figure 71. <i>Typologies of deficiencies (International cooperation - supervision)</i>	124
Figure 72 and 73. <i>Status of implementation and impact (International cooperation - supervision)</i>	126

GLOSSARY OF ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
AMLD	EU Anti-Money Laundering Directive
BO	Beneficial Owner
CDD	Customer due diligence
CI	Credit institution
COM/EC	European Commission
CTR	Cash Transaction Report
DNFBPs	Designated non-financial businesses and professions
EDD	Enhanced due diligence
EEA	European Economic Area
EG	Egmont Group
ESW	Egmont Secure Web
EU	European Union
EWRA	Entity-wide risk assessment
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial intelligence unit
FT	Financing of Terrorism
KYC	Know your customer
LEA	Law enforcement authority
MER	Mutual evaluation report
ML	Money laundering
ML/FT	Money laundering/financing of terrorism
MOU	Memorandum of understanding
MS	Member State
MVTS	Money or Value Transfer Services
NBFI	Non-bank financial institution
NRA	National Risk Assessment
OE	Obligated Entity
PEP	Politically Exposed Person
PPP	Public-private partnership
PSP	Payment Service Provider
RBA	Risk-Based Approach
RBS	Risk-Based Supervision
SAR/STR	Suspicious Activity Report/Suspicious Transactions Report
SRB	Self-regulatory body
TCSP	Trust and Company Service Provider
UBO	Ultimate beneficial owner
UTR	Unusual transaction report
VASP	Virtual Asset Service Provider
VAT	Value Added Tax

EXECUTIVE SUMMARY

The present EU overall report outlines the findings on the level of effectiveness of implementation of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th AML Directive) by the EU Member States. It was produced by the Council of Europe pursuant to the Service Contract with the European Commission on Assessment of the Concrete Implementation and Effective Application of the 4th Anti-Money Laundering Directive in the EU Member States (JUST/2018/MARK/PR/CRIM/0166). The Assessment started on 24 July 2019 and the total duration of the project was 37 months.

The overall report concludes that a significant amount of work has been undertaken by the Member States to effectively implement the specific provisions of the 4th AMLD. Member States are committed to the fight against financial crime, and effectively addressing ML and TF has become one of their key priorities. Almost all Member States have established national-level committees or bodies to promote close cooperation and coordination between the competent authorities to identify, assess and understand the ML/TF risks faced by the Member State and to ensure the effective development and implementation of AML/CFT-related strategies.

Nonetheless, several gaps were still identified by the review teams that need to be addressed by the Member States on a priority basis, in particular for those that are assessed to have a substantial impact on the effective and concrete implementation of the assessed 4th AMLD provisions in practice. Some of these gaps or shortcomings that are identified to be recurrent across many sectors and apply to a number of Member States include the following:

Risk assessment, internal control and group policies (Articles 8, 45, 46)

The common shortcomings identified include gaps relating to either a complete lack of or inadequate enterprise-wide risk assessments by most obliged entities, especially non-financial businesses and professions, some non-bank financial institutions and smaller banks, which is partially due to outdated or insufficient national risk assessments in some Member States; inadequate implementation of AML/CFT policies, controls and procedures (including insufficient resource allocation) by some financial institutions and particularly the non-financial sectors; insufficient dissemination and level of awareness and understanding of the national risk assessment findings, especially in the non-financial sectors; limited or uneven understanding of ML/TF risks by most obliged entities (including smaller banks, non-bank financial and especially non-financial institutions).

Limited/insufficient guidance on AML/CFT prevention (including on conducting entity-wide risk assessment) is available to enable the development of crucial risk understanding and implement sector-specific mitigating measures. Moreover, there are shortcomings in the risk-based approach to supervision and monitoring affecting the effective implementation of the requirements. Insufficient guidance, policies, controls and procedures on TF risk identification and mitigation for certain categories of obliged entities (particularly some non-bank financial institutions and non-financial entities) is identified. Furthermore, the lack of comprehensive sectoral risk assessments, particularly for the non-financial sectors is an important obstacle for ensuring the effectiveness of application of the respective 4th AMLD provisions. The assessment process identified in many instances lack of clarity and no sharing of information (including on reported suspicious transactions) at group level; insufficient or quasi non-existent feedback to obliged entities on reported suspicious transactions; limited or insufficient guidance on ML/TF trends and suspicious indicators, and limited effect of conducted training (mainly for non-financial sectors and some non-bank financial institutions).

Customer Due Diligence (Articles 13.1, 14, 18 (1-3), 20, 21, 22, 23, 25, 26, 27, 28, 29)

Most Member States are found to have deficiencies across all or most OE sectors in relation to the effective implementation of customer due diligence requirements, the majority of which were rated as having a major impact. Specific shortcomings are related to general failures or weaknesses in implementing significant part of the customer due diligence (CDD) requirements, and notably the identification and verification of beneficial owners (BOs). Most Member States are found to have deficiencies across all sectors in relation to the effective application of the requirements concerning the CDD reviews and ongoing monitoring of customers. Some Member States are found to have deficiencies across some OEs in relation to ensuring that suspicious transaction reports are filed where the OE is unable to comply with the customer due diligence requirements. Specific shortcomings in the application of enhanced due diligence measures relate to the scope and nature of the measures undertaken and the use of limited risk-based criteria to evaluate customer risk profiles. A notable trend was established with regard to the deficient application of the enhanced due diligence particularly within the non-financial sectors.

Most Member States are found to have deficiencies across all obliged entities in relation to the effective application of the 4th AMLD provisions concerning politically exposed persons (PEPs), predominantly in relation to over-reliance on self-identification of PEPs by customers, detection and assessment of close associates, ongoing monitoring and reclassification of PEPs following cessation of a public role. A limited number of Member States are found to have deficiencies in relation to the effective application of third-party reliance obligations, primarily related to non-financial institutions reliance on third parties without requisite controls being in place, notably in most jurisdictions considered to offer services as an international finance centre.

Transparency of beneficial ownership information and beneficial ownership registration (Articles 30-31)

Several deficiencies are found to have a substantial impact on the objectives of the 4th AMLD with regard to the transparency of ownership, particularly as a result of limited availability of BO information and limited reliability and use of BO registers. In a significant number of Member States BO registers for legal entities are either not yet established, not yet operational, or not sufficiently populated. There are deficiencies identified with regard to the inadequate verification and monitoring of the BO data recorded on the register. In many cases limited understanding was demonstrated and significant challenges were faced by most obliged entities (including smaller banks, non-bank financial institutions, and particularly non-financial sectors) relating to BO identification and verification. Furthermore, reliable and up to date BO information was not always available to competent authorities. Limited or insufficient outreach and guidance to the private sector (including legal persons and legal arrangements) on the concept of BO, mechanisms to identify and verify BO(s), their obligations under the law, and the registration of BO information on the register are observed. In many cases effective, dissuasive and proportionate sanctions for violation of BO requirements are not applied.

In some Member States there is limited or no access to BO data on the register from obliged entities and even from competent authorities. Non-enforceable BO requirements for companies or lack of effective monitoring are also observed. As a result, in a number of cases BO register is used to a limited extent by OEs and competent authorities (due to technical complications or reliability) and discrepancy reporting (especially by obliged entities) remained on a low level. Many of the deficiencies identified under Article 30 also apply to legal arrangements under Article 31, including with regard to verification, sanctions, and lack of proper risk assessment to determine ML/TF risks specific to legal persons and arrangements in the Member States.

Functioning of the Financial Intelligence Units (FIUs) (Article 32)

Common deficiencies in a number of Member States with an impact on the effectiveness of the Financial Intelligence Units (FIUs) include mainly insufficient operational and strategic analysis and inadequate resources. The insufficient operational analysis is mainly due to lack of proper exploitation of a wide range of information sources available and accessible to FIUs, lack of clear procedures or guidelines on STR prioritisation and the analytical process, limitations to the available financial intelligence due to insufficient reporting (in terms of both quantity and quality) by most OEs. In a number of cases limited staff is allocated for strategic analysis and this analysis is not performed effectively resulting in limited outputs, limited dissemination or a lack of in-depth analysis. The limited use of powers to suspend/delay transactions by FIUs in most Member States is noted. Furthermore, findings of the assessments indicate in a significant number of cases low or inadequate dissemination of the results of FIU's analysis to competent authorities, which is not commensurate with the major national ML/TF risks.

The inadequate financial, technical and human resources available to FIUs in most Member States to efficiently perform their functions is one of the major factors contributing to the aforementioned deficiencies. In addition to these shortcomings there is limited or inadequate systematic feedback to FIUs on the use and outcome of disseminated information by other competent authorities; limitations in obtaining certain types of information from other competent authorities as well as limitations on the operational independence and autonomy of FIUs in some Member States. The fact that the FIU in some Member States is not the "central national unit" for receiving, analysing and disseminating all STRs relating to ML and associated predicate offences as well as for TF raises serious concerns over the effectiveness of the respective units.

Suspicious transaction reporting (Articles 33, 34, 35, 36, 46.2)

The common deficiencies identified with regard to the reporting of suspicious transactions include gaps relating to low and inadequate reporting by certain categories of obliged entities, particularly the non-financial sectors and most non-bank financial institutions, which was found to be inconsistent with the materiality of the respective sectors and particularly the higher risks associated with some of these sectors in a number of Member States. There is limited or inadequate implementation of the requirement in most Member States relating to the suspension of transactions by obliged entities, including by banks, non-bank financial institutions and the non-financial sectors, on their own initiative in order to inform the FIU and receive further instructions. Limited reporting of attempted transactions, including lack of sufficient statistics maintained by FIUs in this regard is another finding across the Member States reports.

The quality of suspicious transaction reports is found to be insufficient in several cases, particularly valid for the reports filed by non-bank financial institutions and non-financial sectors. There is a failure to effectively and fully implement TF reporting obligations observed in many cases, which might be due to the challenges obliged entities face in properly identifying TF risks. Limited guidance and lack of clarity on the concept of privileged circumstances among the relevant obliged entities contribute to these deficiencies. Competent authorities, including supervisors, are found in a number of Member States to report only to a limited extent any (unreported) suspicious ML/TF activities that have been discovered during their inspections. The lack of or insufficient feedback by FIUs to most OEs on their submitted suspicious transaction report and limited or insufficient guidance, training and outreach to most obliged entities, especially smaller financial institutions and the non-financial professions, on recent ML and TF

practices and sector-specific ML/TF suspicious indicators are identified as major factors contributing to the low quality and quantity of reporting.

Practical arrangements in terms of data protection and record-retention (Article 40 with AML relevance caveat)

Deficiencies impacting the effective implementation of data protection requirements under Article 40 are detected in almost half of the Member States, with shortcomings mainly in relation to OE's understanding and application of the requirements concerning the destruction of records and extension of the requisite retention period. Limited guidance provided to the obliged entities seem to be among the major factors contributing to these results.

Supervision of financial institutions and designated non-financial businesses and professions (Articles 47-48)

Overall, most Member States are found to have deficiencies in the effective implementation of the respective market entry requirements. Deficiencies are attributable to several factors including the specific market entry requirements under applicable legislation and the limited scope of checks on both BOs and individuals performing a management function to ensure they are fit and proper. The absence of complete and formalised data management by most supervisors about market entry supervisory activities, including licences refused, revoked, authorisations denied or withdrawn, or individuals rejected on fitness and propriety grounds, create challenges for supervisors in assessing market entry risks within their sectors and the effectiveness of the measures they undertake.

All Member States reviewed are found to have deficiencies related to their effective implementation of some aspects of supervision. Deficiencies are attributable to several factors including misalignment between the risk rating of some sectors by the supervisor and the risk rating assigned in the national risk assessment, lack of sectoral risk assessments and inadequate understanding about the risk profile of the OEs within the sectors for which certain supervisors are responsible.

Additional deficiencies identified across several Member States include AML/CFT supervision not being performed on a risk-sensitive basis by all supervisors, and notably, inconsistencies across the non-financial sectors and self-regulatory bodies. In some cases, risk assessments of certain sectors are undertaken using a methodology originally designed to assess risks and control frameworks associated with banks and credit institutions, with no consideration for the specific context and materiality or risk-relevant differences unique to the sectors being assessed. The assessments noted significant under-resourcing in view of the breadth and depth of the AML/CFT responsibilities and associated workload of supervisors in a number of sectors, predominantly the non-financial businesses and professions. Furthermore, inadequate cross-border coordination and supervision of passporting/passported entities and concerns about the comprehensive and effective use of available remedial measures were raised in the assessments. The absence of a methodology for assessing the effectiveness of the supervisory activities and whether the desired outcome was achieved is noted as well. In a number of cases the lack of statistics or the deficiencies in the data management undermined the ability of Member States to demonstrate the effectiveness of supervision and implement appropriate measures to strengthen the impact of supervisory action.

Sanctions for non-compliance (Articles 58-59)

Most Member States are found to have deficiencies impacting the effective implementation of sanctions to ensure compliance with the 4th AMLD requirements by obliged entities. Shortcomings identified include the absence of effective, proportionate and dissuasive sanctions; legal impediments affecting some supervisor's ability to sanction obliged entities directly and in a timely manner and a notable preference by supervisors to employ other supervisory and enforcement measures to respond to AML/CFT non-compliance.

National cooperation and coordination (Article 49 - excluding Law enforcement agencies)

The common deficiencies identified include gaps relating to insufficient coordination and cooperation among the competent authorities (including SRBs) when conducting risk assessments (including national risk assessment) and implementing relevant policies and/or activities particularly at the strategic level. There is lack of or inadequate AML/CFT strategy and/or action plan in a number of Member States. Deficiencies relating to the comprehensiveness, quality and dissemination of the findings of national risk assessments to the obliged entities are also detrimental to implementing a strategic approach in addressing ML/TF risk and to the consistent application of measures by obliged entities.

The assessments found in many instances insufficient exchange of information or cooperation between most supervisors and the FIU; insufficient exchange of information or cooperation among most supervisors. The composition of AML/CFT-related committees/working groups in some cases excludes some competent authorities (e.g. supervisors and SRBs).

International cooperation between FIUs and supervisors (Articles 45.4, 48.4, 48.5 and 52-57)

Less than half of the Member States reviewed are found to have deficiencies concerning the effective implementation of Articles 52-27 concerning international cooperation among FIUs. Overall, these deficiencies are of a limited nature and impact and primarily relate to weaknesses in the leveraging of opportunities to cooperation and collaboration in cross-border cases, including the timely sharing of suspicious transaction reports. Some deficiencies in relation to data management are also noted by reviewers in relation to monitoring the effectiveness of cooperation through comprehensive data on the scope and frequency of international cooperation and coordination by the FIU.

Just over half of the Member States reviewed are found to have deficiencies concerning the effective implementation of Articles 45.4, 48.4, 48.5 and 58.5. The main shortcomings relate to limited cooperation and coordination by supervisors with competent authorities on cross border cases, including the oversight of obliged entities where the Member States act in the capacity of home or host supervisor.

PREFACE

The present report outlines the findings on the level of effectiveness of implementation of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th AML Directive) by the EU Member States. It was produced by the Council of Europe pursuant to the Service Contract with the European Commission on Assessment of the Concrete Implementation and Effective Application of the 4th Anti-Money Laundering Directive in the EU Member States (JUST/2018/MARK/PR/CRIM/0166). The process aims to provide the European Commission with analysis on the adequacy of the implementation of the AML/CFT rules in the Member States, excluding their overseas countries and territories. The Assessment started on 24 July 2019 and the total duration of the project was 37 months.

The horizontal report is conducted pursuant to a methodology which aims to identify, on the basis of the individual reports of all EU Member States, systemic issues impacting the effective implementation of the provisions and any legal requirements and practices and procedures that impact the effective implementation of the AML/CFT measures and represent an obstacle to the mitigation of the risks. The report includes also, to the extent available, examples of good practices and information on the compensatory measures and detrimental factors (such as conflicting provisions, procedures, cascading effect of systemic deficiencies affecting the remaining themes) to the implementation of the assessed provisions of the 4th AML Directive. The following provisions of the 4th AMLD were subject to review in the country assessment reports pursuant to an assessment methodology applied in a standard way and subsequently this overall report:

- i. Risk assessment, internal control and group policies (Articles 8, 45, 46);
- ii. Customer Due Diligence (Articles 13.1, 14, 18 (1-3), 20, 21, 22, 23, 25, 26, 27, 28, 29);
- iii. Transparency of beneficial ownership information and beneficial ownership registration (Articles 30-31);
- iv. Functioning of the FIU (Article 32);
- v. Suspicious transaction reporting (Articles 33, 34, 35, 36, 46.2);
- vi. Practical arrangements in terms of data protection and record-retention (Article 40 with AML relevance caveat);
- vii. Supervision of financial institutions and designated non-financial businesses and professions (Articles 47-48) and sanctions for non-compliance (Articles 58-59);
- viii. National cooperation and coordination (Article 49 - without covering the Law enforcement agencies);
- ix. International cooperation between FIUs and supervisors (Articles 45.4, 48.4, 48.5, 52-57, 58.5).

The horizontal review takes into account the level and impact of deficiencies to identify the most common typologies of systemic shortcomings affecting the effectiveness of implementation and the practical application of the 4th AMLD provisions.

This transversal review of the findings of the 4th AMLD was prepared by Dr Ramandeep KAUR CHHINA and Ms Samantha J. SHEEN with input from the Council of Europe Secretariat.

The report presents the analysis on the effectiveness of implementation and practical application of the select provisions of the 4th AMLD in separate themes following a uniform approach:

- a. **Systemic Issues and Deficiencies:** This section includes an overview of the most common and important shortcomings affecting the effectiveness of implementation and practical application for each article of the 4th AMLD under the respective theme. Major typologies of shortcomings are analysed as part of this section.
- b. **Legal requirements and practices that impact implementation:** An overview is provided for the most relevant legal requirements and practices – as indicated in the 2019 transposition analysis of the European Commission or identified during the assessments – which are considered by the assessment teams to have an impact on the effectiveness of implementation and practical application for each Article of the 4th AMLD under the respective theme.
- c. **Good practices:** The assessment process focused on identifying obstacles to the effective implementation of the 4th AMLD. Nevertheless, some good practices emerging from the assessments are summarised in this section.
- d. **Compensatory measures and detrimental factors:** This section presents an overview of underlying reasons for the deficiencies in the practical application of the 4th AMLD, related to contextual factors, as well as any additional legal requirements, practices and procedures that have an effect on the application of the respective measures.
- e. **Conclusions:** The main findings on the practical application for all EU Member States are summarised as well as the overall level of practical application is indicated in a standard and uniform manner based on the conclusions for the level and impact of the deficiencies reached in the separate Member State reports.

The overall report is informed by the level and impact of deficiencies to identify the most common and significant typologies of shortcomings affecting the effectiveness of implementation and the practical application of the 4th AMLD provisions within the themes of the assessments. The assessment scale of the deficiencies, used in all assessment reports in line with the methodology, was instrumental in the process of transversal analysis.

The overall review of the implementation takes into account not only the number of the deficiencies but also their nature, i.e. whether they are essential or of a technical nature, and specific examples are provided. It is also noted that the conclusions are also influenced by the weight of the respective deficiencies in the application of the respective theme or set of measures (overall impact).

The report also takes into account the scope of stakeholders that are affected by the respective deficiency. For example, a deficiency could be limited to all or one category of obliged entities, one or several authorities, could affect the regional or supranational mitigation of risks by the respective supervisory institutions, etc.

The (most commonly) identified typologies of deficiencies are analysed in the respective sections of the report. Similar typologies could be observed under different levels of deficiencies and impact depending on the analysis in the respective Member States assessment reports which takes into account the importance of the deficiencies for the application of the respective provision and its impact in view of the materiality and context, as well as the scoping of the assessment.

In certain cases, various typologies are grouped for better understanding considering the particular nature of numerous linked deficiencies and their relation to the specific context of the assessed Member State.

In a number of assessments, the conclusions on certain themes identify simultaneously major and limited deficiencies with major and limited impact. The tables and charts in this report attempt in most cases to disaggregate the data so that the respective typologies are clearly linked to a certain level of deficiency and impact. In certain limited cases (mainly supervision) this has not been fully done due to the complex and interlinked nature of the respective conclusions on the theme and in order to avoid the inconsistency of presentation of the results and typologies.

The report reflects as objectively as possible the situation in the assessed Member States at the time of each respective on-site/remotely online visit. Any subsequent changes to legislation, policies, and operational practices are not reflected in the reports and consequently in the overview of the findings. It should be noted that the conclusions of the Member States assessment reports have been in all cases subject to careful consideration and amendment taking into account the feedback from the authorities on the first drafts of those reports. The responses to the authorities' reactions have been thoroughly documented by all assessment teams as part of the process of finalisation of the reports.

The separate Member State assessment reports relied on the transposition analysis conducted by EC in 2019. Member States referred as part of the assessments to certain amendments of the legislative framework introduced in order to remedy shortcomings in the transposition of the 4th AMLD noted in EC analysis. It should be noted that the analysis of transposition falls outside the scope of the contractual obligations of the Council of Europe. Hence, these changes and updates have been indicated in the reports where relevant, but in view of the above and also due to resource constraints the assessment teams were not in a position to conduct comprehensive analysis and make conclusions with regard to the status of transposition. Certain clear legislative amendments and remedied deficiencies as well as specific legal requirements were nonetheless noted and taken into account for the analysis of the Member States reports and for the present EU overall report.

CHAPTER 1. Overall risk focus of the assessments

1. Each Member State assessment was conducted following the determination of areas of increased focus, which defined the scope of the assessment and the scope of on-site or remotely online meetings for each Member State. The following major factors were considered as part of this scoping process based on the information obtained under the methodology:
 - Risks as identified in the supranational, national and other risk assessments, evaluation reports by FATF/Moneyval or other relevant EU institutions;
 - Areas of concern identified by the European Commission;
 - Scoping or similar processes conducted as part of other (relevant in the AML/CFT context) assessments or reviews of each Member State and relevant vulnerabilities observed in those assessments/reviews.
2. Contextual factors that were particularly relevant for the assessments include the following:
 - a) The high usage and movement of cash (informal economy) in almost half of Member States as posing particular risk with regards to ML and TF.
 - b) The geographic position of some Member States that makes them particularly vulnerable to illegal movement of funds.
 - c) The size and weight of the financial sector and strong links of some Member States' banking sector with certain regions, or internationally, pose specific risks to the financial system.
 - d) The development of new technologies in the provision of financial services and payment services provided in the passporting context, posing new risks and the assessment of the measures undertaken to ensure the effectiveness of the AML/CFT measures in the context.
 - e) For Member States offering the investment-related residence and citizenship scheme, an evaluation of the ML risks associated with the scheme and any mitigating measures that have been adopted.
 - f) The identified levels of corruption, coupled with continuing privatisation, significant presence of state-owned enterprises and limited competition in some economic sectors in some Member States, that aggravates identified ML/TF risks.
 - g) The operation of free zones in around one third of Member States that impacts ML/TF risks.
 - h) The Member States' tax regime, including voluntary tax compliance schemes of unlimited duration and the associated stability savings accounts, were considered as important contextual factors.
 - i) The population characteristics, particularly the percentage of population below poverty line and migrating abroad, has been considered as a relevant contextual factor in some assessments.
 - j) Considering the important concern of tax crimes as a predicate offence in some Member States, including the cum-ex transactions, dividend arbitrage trading schemes, or VAT fraud affecting some EU Member States, the misuse of corporate

structures and legal arrangements is one of the contextual factors considered relevant in the assessments.

- k) The quality and comprehensiveness of NRAs and the extent to which they contributed to adequate understanding and mitigating action targeting the relevant risks by the authorities at national and regional level as well as among the OEs.

CHAPTER 2. Application of risk assessment, internal control and group policies (Articles 8, 45 and 46)

Article 8

3. Some of the major factors underlying effective implementation of Articles 8, that were checked as part of assessment process in line with the assessment methodology, include the following:
 - a) Quality and scope of risk assessments developed by OEs.
 - b) The extent to which risk assessments reflect the supranational, national and sectoral risks identified by authorities.
 - c) The extent to which risk assessments properly identify high-risk scenarios characteristic to the OE.
 - d) The frequency of updated risk assessments by OEs, including any circumstances of updating risk assessments (e.g., new product launch; geographic expansion, etc.).
 - e) Justification of exemptions allowed by authorities to relieve OEs from documenting risk assessments.
 - f) The adequacy and appropriateness of risk mitigation measures applied by OEs based on internal risk assessments;
 - g) Degree of involvement of senior management in AML/CFT compliance management.
 - h) The role of independent audit function reports in AML/CFT compliance systems and any action(s) taken as a result of the audit function reports;
 - i) Any cases where audits did not identify infringements later identified by supervisory bodies/SRBs.

Systemic Issues and Deficiencies

4. Although all Member States (except one) have carried out national ML/TF risk assessments (NRA), they are out of date or insufficient in some Member States. There is generally a lack of proper assessment of TF risks in the NRAs of some Member States, in addition to other deficiencies. Limited awareness of OEs about the findings of their NRAs, as well as their limited scope and analysis, have affected the understanding of supervisors as well as OEs in most Member States about the ML/TF risks to which OEs in respective sectors are exposed to and consequently impacting the adequacy of the entity-wide risk assessments (EWRA). The application in practice of the requirements of Article 8 has also been impacted by the limited or lack of proper guidance by competent authorities and supervisors to OEs, including FIs and DNFBPs, on detecting and preventing ML/TF risks within their EWRAs.
5. Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 8 include the following:

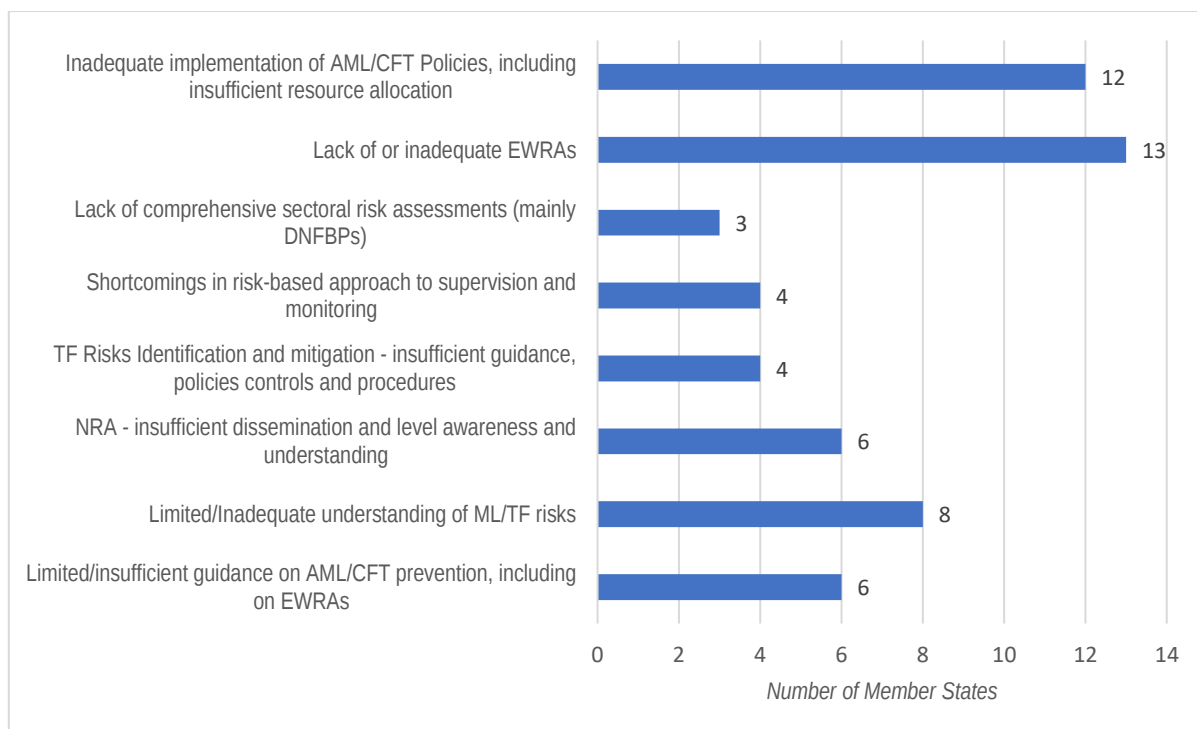


Figure 1. *Typologies of major shortcomings, Article 8 (risk and internal controls)*

6. Some of the limited deficiencies that were identified in the Member States relating to the effective implementation of Article 8 include the following:

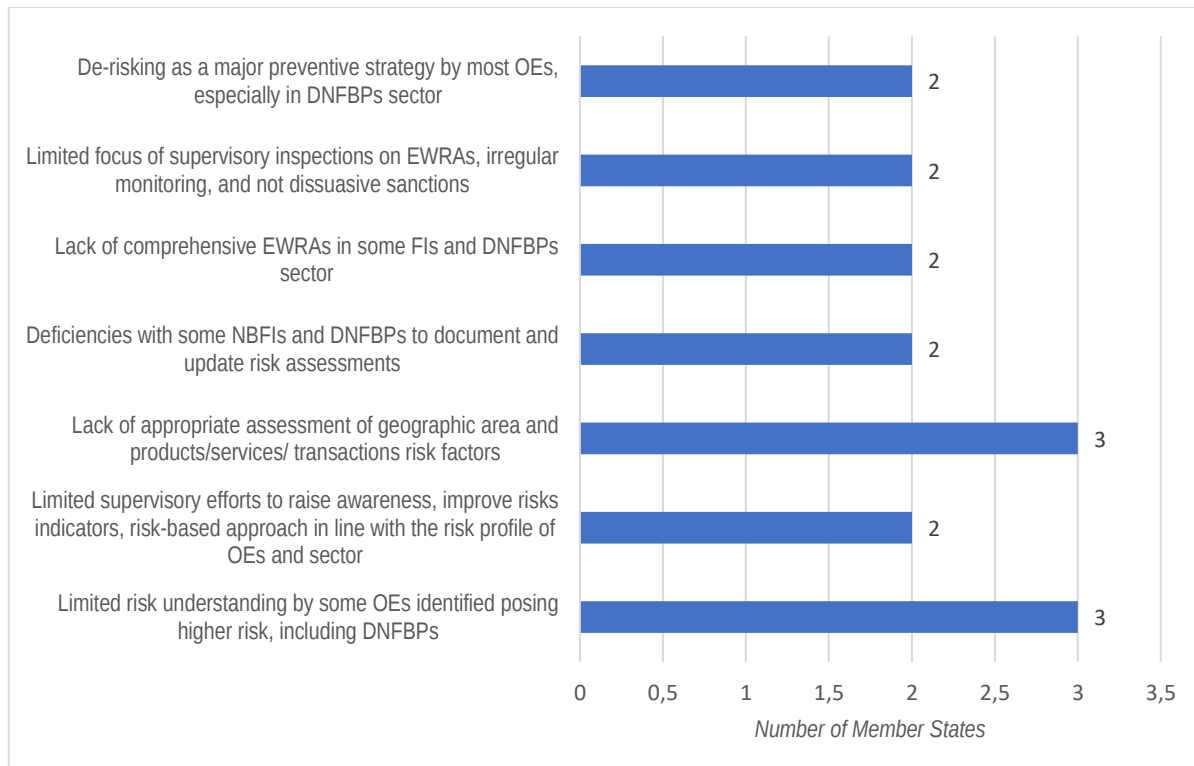


Figure 2. *Typologies of limited shortcomings, Article 8 (risk and internal controls)*

7. FIs, including banks and NBFIs, in most Member States are better aware of the risk factors underlying EWRAs, their obligations to conduct or update EWRAs, and usually they conduct these risk assessments regularly. Issues were however identified in six (6) Member States as to the adequacy and effectiveness of these EWRAs conducted by FIs (mostly smaller banks and NBFIs), especially considering their uneven level of understanding (particularly of geographical factors), lack of sufficient consideration of all relevant risk factors in the EWRAs, and in ensuring that EWRAs are proportionate to the size and nature of their business. The EWRAs are often found to be generic and not specific to the risks facing a respective FI considering its business model.

Example: FIs in three (3) Member States apply a uniform (low) risk level to all EU/EEA countries, without giving more consideration to the risk associated with each jurisdiction.

8. The understanding and practical implementation of the requirements relating to EWRAs vary considerably among DNFBPs in almost all Member States. Generally, only one or two DNFBPs within each Member State, and that too differs from one (1) Member State to another, are able to demonstrate their somewhat sufficient knowledge of the risk factors underlying EWRAs and the implementation of this requirement in practice. Overall, the DNFBPs sector in most jurisdictions has limited understanding of EWRAs and thus inadequate implementation of this requirement of conducting effective EWRAs in practice – the issue becomes particularly problematic with smaller DNFBPs. The EWRAs of DNFBPs are mostly found to be not sufficiently comprehensive and internal policies and controls are not adapted to the identified ML/TF risks.

Example: In some Member States, DNFBPs and some NBFIs have not demonstrated sufficient understanding of the EWRA requirement and largely referred to customer risk assessments in the discussions on this topic.

9. In most Member States, the level of awareness and use of the findings of the NRA by the banks and most NBFIs is usually better than DNFBPs. Banks and most NBFIs (with a few exceptions) are generally aware of the findings of the latest NRA with respect to their respective sectors, although in some Member States these national risks have not been fully incorporated into the EWRAs particularly of smaller banks and NBFIs. Concerns were also raised by FIs in a few Member States on the adequacy of the NRA findings for their respective sectors, highlighting the assessment to be too generic, inconsistent and not relevant for their EWRAs.
10. In most Member States, DNFBPs in general (with the exception of few sectors that vary from one Member State to another) have limited understanding or awareness of the findings of their latest NRAs with respect to their sectors and thus, they are not reflected in their EWRAs. In a few Member States, some DNFBPs (e.g., TCSPs, lawyers, accountants and gambling operators) have raised concerns about the accuracy of the NRA findings for their respective sectors and do not find them to be of much use in their EWRAs.
11. There is uneven understanding of TF risks, as well as implementation of specific measures to mitigate TF risks among FIs (including banks) and DNFBPs in most Member States. In many instances the mitigation of TF risks is usually constrained to screening against various sanction lists and terrorist lists. In a few Member States, there is also a lack of sufficient guidance from the competent authorities on identifying and mitigating TF risks for certain categories of OEs, particularly DNFBPs and some NBFIs.
12. Guidelines or circulars issued by competent authorities in a number of Member States on conducting EWRAs are not comprehensive, sufficiently detailed and/or specific to the

activities of various sectors which would enable FIs and DNFBPs to develop a crucial risk understanding, enhance their EWRAs and/or internal policies, controls and procedures.

Example: A Guidance issued by one (1) Member State on EWRA has rated all EU Member States as posing same levels of risk and did not provide any risk scenarios for TF.

13. Lack of active engagement of competent authorities, including AML/CFT supervisors, in the NRA process in a few Member States has hampered competent authorities' ability to understand, or improve their understanding of ML/TF risks in their respective sector. This has in turn impacted their supervisory and monitoring functions, as well as the issuance of relevant and comprehensive guidance to OEs on conducting EWRAs.
14. FIs and DNFBPs in most Member States have developed their internal AML/CFT policies, controls and procedures. However, systemic issues and deficiencies have been identified relating to the appropriateness and effective implementation of these measures in practice, while following the risk-based approach, in most Member States. This is largely due to the lack of proper understanding among some FIs and particularly DNFBPs of the firm-level ML/TF risks, which is also related to their insufficient and inadequate EWRAs.

Example: In some EU Member States, the DNFBPs were found not to be fully cognisant with the specific requirements envisaged in their internal policies and controls relating to, for instance, conducting CDD on UBO, PEPs, circumstances when EDD is required, and monitoring of business relationships.

15. The insufficient or out of date EWRAs have affected the adequacy of internal policies and controls among the respective categories of obliged entities. The impact of this deficiency has been increased in some cases by the lack of knowledge and proper supervision and monitoring by the competent authorities of some sectors, particularly DNFBPs.
16. Competent authorities in most Member States have not established robust mechanisms to systematically review and ascertain that EWRAs and/or internal policies, controls and procedures of OEs, both in financial and non-financial sector, are adequate and kept up to date. In most Member States, OEs, especially in the financial sector, are required to submit their EWRAs or internal policies and controls at the licensing or registration process and later they are reviewed during on-site inspections. The number of off-site and on-site inspections carried out by the competent authorities in some Member States are limited and fragmented (i.e., not covering all OEs within the sector), which raises concern on the effective implementation of documented and up to date EWRAs and internal policies and controls by OEs. This is applicable to the financial sector, especially smaller FIs, but particularly relevant for DNFBPs sector where the AML/CFT supervision and monitoring has been identified as a systemic issue in most Member States. Only in some Member States, OEs are required to submit their EWRAs or internal policies and controls to the respective competent authorities on an annual basis, which however does not necessarily include systematic checks or reviews of these EWRAs. These shortcomings could also impact the risk basis of the supervisory engagement of the competent authorities by limiting the information available or actually taken into account with regard to certain risks.
17. The review team has found that:
 - a) To manage the identified ML/TF risks, FIs and DNFBPs in some Member States have confirmed that they prioritise de-risking over managing higher-risk customers or business relationships.
 - b) In some Member States, the role of the senior management in ensuring robust AML/CFT control and the division of responsibilities between first and second line of defence is not clear to OEs, including small banks, NBFIs and DNFBPs.

- c) The audit function in a few Member States is inadequate or adequate only in most large and mid-sized banks, but the quality and independence of audit function is inadequate in small-sized banks.

Legal requirements and practices that impact implementation

18. Some of the legal requirements and practices identified by the review team that might impact the effective implementation of Article 8 in some of the Member States include:
 - a) The practice of de facto delegation of the AML/CFT supervision of one of the DNFBPs sector to a private company in one of the Member States has impacted the efficient supervision and monitoring of this sector, resulting into limited knowledge and awareness of the supervisor on the implementation of adequate and up to date EWRAs and internal policies and controls by OEs in the sector.
 - b) The low level of coordination and cooperation between competent authorities, including the Self-Regulatory bodies (SRBs), in the NRA process has affected the level of granularity of the analysis of risks for relevant sectors as well as their understanding of ML/TF risks facing OEs in their respective sector and thus the quality of risk assessments at individual entity level.
 - c) Lack of obligations on all DNFBPs (e.g., on lawyers, notaries, bailiffs, accountants and tax advisors) to document their risk assessment in one (1) Member State, has resulted into limited understanding of OEs of the ML/TF facing their business or professions and thus insufficient application of risk-driven mitigation measures.
 - d) Lack of legislative requirement in one (1) Member State for independent audit function to test the internal policies, controls and procedures has impacted the effective implementation of Article 8 in ensuring adequate and up-to-date internal policies and controls that are commensurate to the size and nature of business of OEs.

Good practices

19. Some of the good practices that have been observed by the review team in a few Member States in order to ensure the effective implementation of Article 8 include:
 - a) Comprehensive and detailed guidelines on EWRAs and AML/CFT internal control measures, including issuing sector-specific guidelines to identify high-risk transactions or operations.
 - b) Submission of EWRA and internal policies and procedures to the supervisory authority on an annual basis and providing feedback on the quality of such documents for further enhancement.
 - c) Development of uniform internal rules by SRBs, which are mandatory for members, and inform the relevant risk assessment at business level and appropriate risk matrix for assessing risks at client level.
 - d) Establishment of public-private partnerships in most Member States have contributed towards gradually putting in place a valuable forum for the exchange of information related to ML/TF risks, trends and methods.

Compensatory Measures and Detrimental Factors

20. One of the factors identified by the review team that might have a detrimental impact on the effective implementation of Article 8 in some of the Member States is out of date information sources and insufficient NRAs, where either the lack of significant contextual factors reflected in the NRA or the data used for assessment in the NRA or the number of risk areas analysed in the NRA is limited. This might have a detrimental impact on the OE's

understanding of the ML/TF risk and quality of their EWRAs. There has also been lack of understanding of the underlying factors and hence lack of agreement on the risk ratings provided in the NRA for some sectors, which impacted their effective utilisation by OEs in their EWRAs.

21. Among the compensatory measures that can contribute to the effectiveness of this Article even in the presence of transposition gaps in some Member States are the appropriate practices to conduct internal and external audit of the AML/CFT policies and systems, as well as the sharing of information on suspicious reporting to the FIU at group level by some FIs.

Conclusion – Article 8

22. In fourteen (14) Member States, only major deficiencies have been identified on the effective implementation of Article 8, limited deficiencies were found in three (3) Member States, and both major and limited deficiencies were identified in ten (10) Member States.

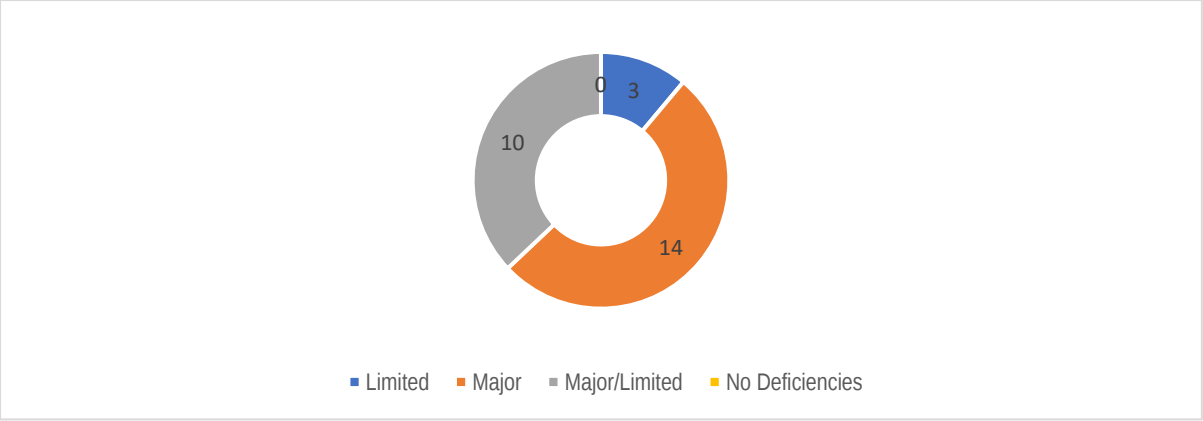


Figure 3. Overall status of the implementation, Article 8 (risk and internal controls)

23. Major deficiencies identified in most Member States have been assessed as having a major impact on the effective implementation of the provisions of Article 8 in these Member States. Limited deficiencies have mostly limited impact on the effectiveness.

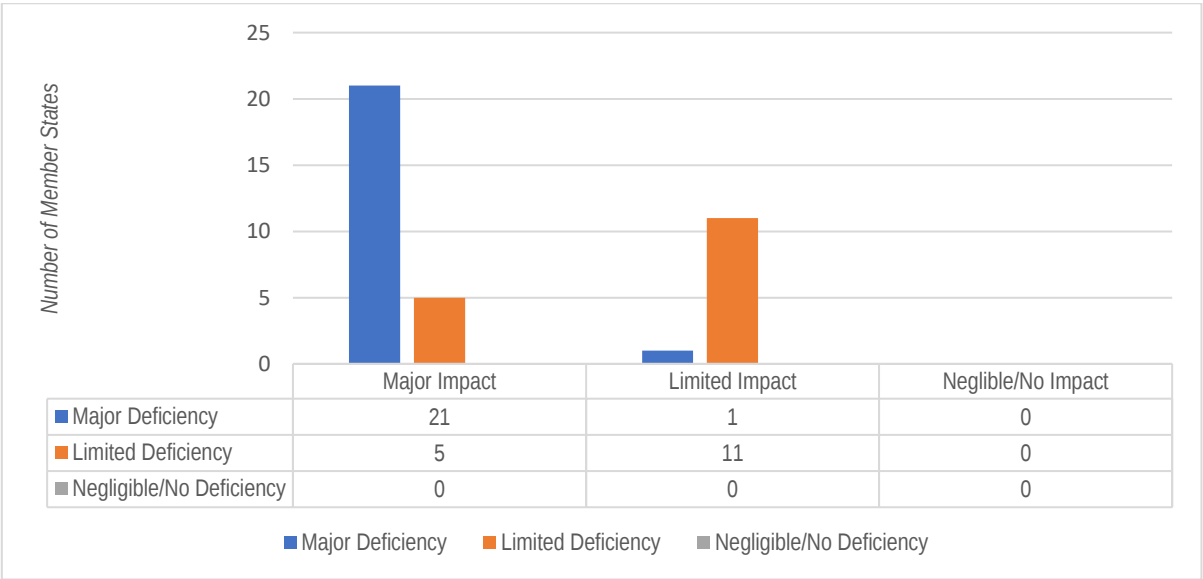


Figure 4. Overall deficiencies and impact, Article 8 (risk and internal controls)

24. Overall, Member States have put a lot of effort into implementing a risk-based approach to AML/CFT by performing their NRAs to identify, assess, and comprehend the ML/TF risks that each State faces. However, more effort still needs to be undertaken to improve the thoroughness and quality of the NRAs in the majority of Member States, making sure that all pertinent risk factors have been taken into account and sufficiently assessed. Additionally, coordinated efforts are needed to increase OEs' awareness and comprehension of the NRA's results, especially of some NBFIs and DNFBPs, which they should take into account while developing their EWRAs. The OEs, particularly NBFIs and DNFBPs, understanding and awareness of EWRAs and the relevant risk factors need to be strengthened. In a number of OEs, this has had an impact on the effectiveness and practical application of internal policies, controls, and processes. The supervisory/competent authorities should also provide OEs with more thorough and sector-specific guidance on how to perform EWRAs, as well as conduct a risk-based supervision and monitoring of their EWRAs, internal policies, controls, and processes.

Article 45

25. Some of the factors underlying effective implementation of Articles 45 include the following:
- a) The quality and scope of group-wide policies and their implementation in branches and subsidiaries.
 - b) Any obstacles to group-wide policy implementation and solutions.
 - c) Concrete examples of information shared within groups.
 - d) Nature and extent of the obstacles to sharing information on suspicious transactions reported to FIU, including any examples of cases when sharing information (on suspicious transactions reported to FIU) was limited.
 - e) Mechanisms and procedures applied by OEs and/or supervisors to determine the minimum requirements in third countries are less strict.
 - f) Level of guidance for determining situations that do not allow the application of measures and for additional measures to be applied.
 - g) Any concrete examples of application of AML/CFT measures by branches/subsidiaries, which are stricter than host country.

Systemic Issues and Deficiencies

26. Internal policies and controls at group level are reviewed by the competent authorities in most Member States at the authorisation process and later during on-site AML/CFT inspections. Only in a few Member States, the AML/CFT inspections do not assess the effective implementation of group-wide policies, especially by entities located outside of the Member State i.e., at the level of branches and majority-owned subsidiaries, particularly of FIs, which are located outside of the home jurisdiction, including in third countries with weaker AML/CFT controls required. There does not appear to be any established mechanism in Member States requiring OEs to systematically submit updated group-wide policies and controls, when applicable, to the competent authorities.
27. There is a lack of clear understanding among FIs in most Member States about: a) the categories of information that should, or could be, shared within the group; b) the sharing of the STRs submitted to the FIU at group level and any conditions under which they should be shared; and c) the extent of the information that could be shared within the group. Consequently, there are varying practices among the FIs of each jurisdiction on sharing such information at group level, although majority tend to share information only if a mutual customer is identified. Due to lack of understanding and clear guidance on the

practical implementation of this provision, in most Member States there is a reluctance or generally a tendency among FIs (including large FIs) and DNFBPs (where applicable) to not share information on STRs at the group level.

28. Most Member States do not have clear procedures concerning the practical application of Article 45(8) of 4th AMLD by the FIU i.e., circumstances or conditions under which the FIU may forbid the exchange of information on a disclosure within a group, which has resulted into this power never been exercised by FIUs.
29. The requirement under Article 45(9) of the 4th AMLD, which requires the establishments of central contact points by electronic money issuers and payment service providers that operate in the Member State (other than as a branch) and whose head office is situated in another Member, has not been adequately implemented in practice yet in a number of Member States – not all OEs have established these central contact points and in some Member States, there is also a lack of clarity on the timescale within which this should be accomplished.
30. The review team has also found isolated cases of the following shortcomings:
 - a) DNFBPs do not adopt a group-wide policy approach.
 - b) A few smaller NBFIs (e.g., MVTs providers) have a limited understanding on the application of group-wide policies.
 - c) Identified challenges in sharing critical information between firms belonging to a group when either a parent or branches/subsidiaries are located in third countries with strong privacy or secrecy provisions in their legislation.
 - d) Two (2) Member States have explicitly applied restrictions on sharing information about STRs filed to the FIU in case of an agency relationship.
31. Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 45 are summarised below:

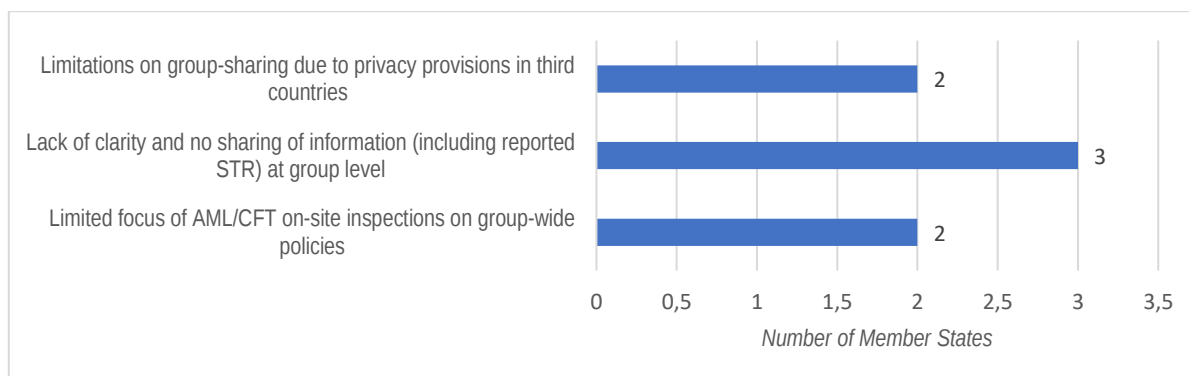


Figure 5. *Typologies of major deficiencies, Article 45 (group policies)*

32. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 45 includes the following:

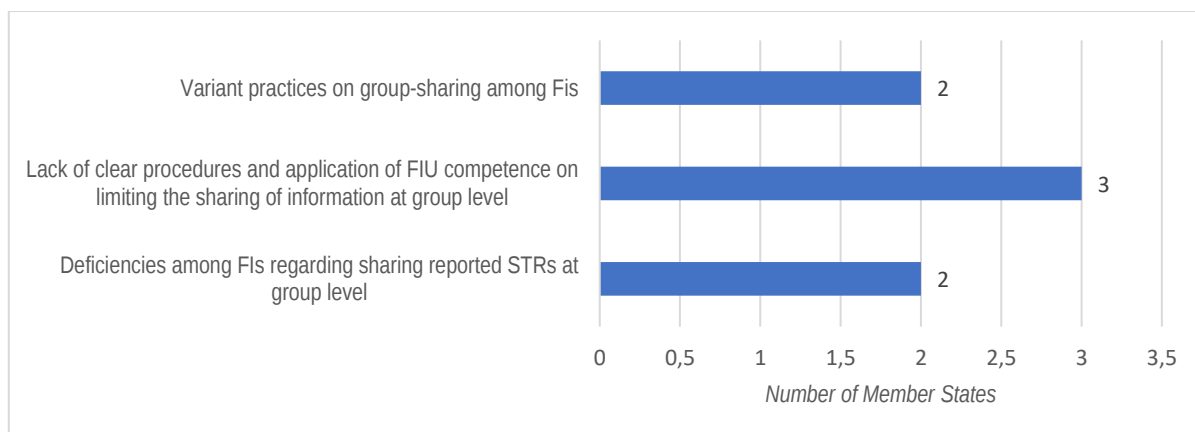


Figure 6. *Typologies of limited deficiencies, Article 45 (group policies)*

Legal requirements and practices that impact implementation

33. Some of the legal requirements and practices identified by the review team that might impact the effective implementation of Article 45 in some of the Member States include the following.

- a) Incomplete transposition of Article 45(8) into the national provisions of some Member States or inconsistency between Article 45(8) of 4AMLD and the national legislation, which is not remedied by other means, has adversely affected the effective implementation of this provision relating to information sharing between members of same group. One EU Member State, for instance, only allows sharing of information between entities within the same financial and insurance conglomerate and does not extend to all entities within the same group, as required by 4th AMLD. In another Member State, information sharing is subject to strict confidentiality requirements, with one exception which provides the possibility to exchange information with the member of the same group if they provide services to the same client. The legal requirement in one (1) Member State that does not oblige but leaves it on the discretion of OEs to share the information on suspicions reported to the FIU that funds are proceeds of criminal activity or are related to TF within the group has impacted the effective implementation of Article 45(5). In the latter case many FIs rather refrain from sharing information on STRs or do this only if a mutual customer was identified.

Good practices

34. A good practice that has been identified in one (1) Member States is the review of internal policies and controls of OEs at group level by competent authorities not only in the course of its authorisation process and on-site inspections but also during offsite monitoring, requiring OEs to submit their updated group-wide policies on a regular basis.

Compensatory Measures and Detrimental Factors

35. N/A

Conclusion – Article 45

36. In six (6) Member States, only major deficiencies have been identified on the effective implementation of Article 45; limited deficiencies were identified in six (6) Member States whereas both major and limited deficiencies have been identified in two (2) Member States. In thirteen (13) Member States, no deficiencies have been identified.

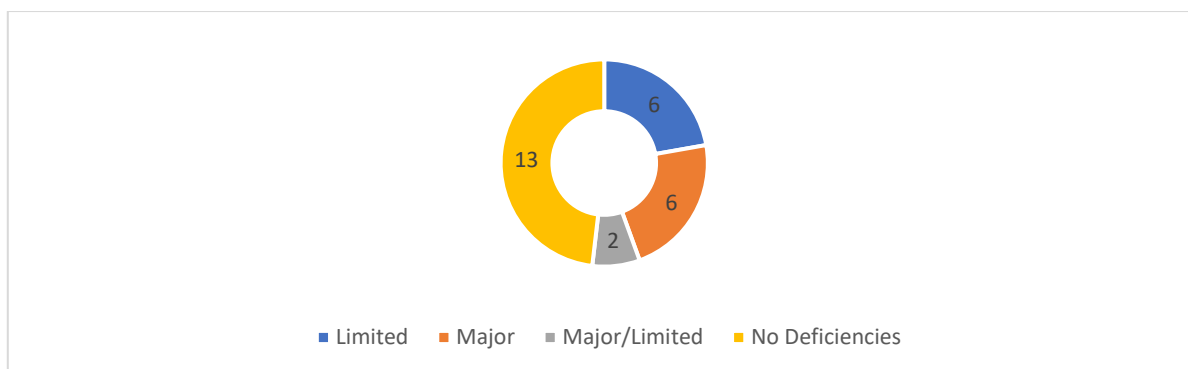


Figure 7. Overall status of implementation, Article 45 (group policies)

37. In all cases major deficiencies have been assessed as having a major impact whereas limited deficiencies have been mostly assessed as having limited impact on the effective implementation of the provisions of Article 45 in these Member States.

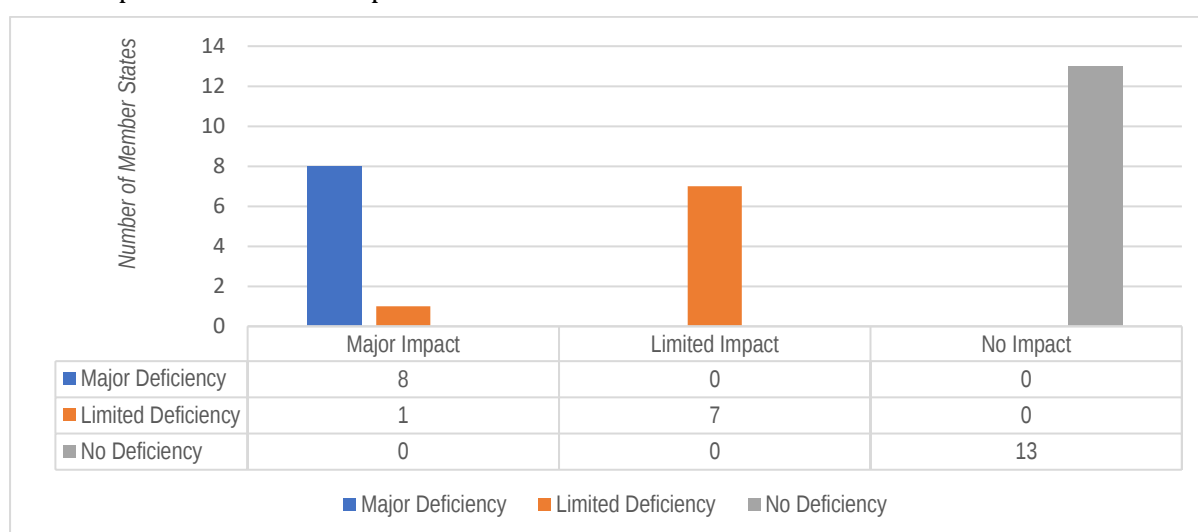


Figure 8. Deficiencies and impact, Article 45 (group policies)

38. Overall, this report concludes that assessing the effective implementation of group-wide policies, especially by entities located outside of the Member State i.e., at the level of branches and majority-owned subsidiaries, should be a regular component of the on-site inspections carried by competent authorities in all Member States. OEs in most Member States need clear instructions on how to implement group-wide policies and share information at the group level.

Article 46

39. Some of the factors underlying effective implementation of Articles 46 include the following:
- Training programmes for staff of obliged entities, including frequency and periodic updates.
 - Extent to which training programmes reflect supranational, national and sectorial risks identified by authorities, and the risks identified (or not identified) by reporting entities in their risk assessments.

- c) Extent to which data protection requirements are addressed in training to ensure unimpeded information exchange and effective implementation of the applicable AML/CFT rules.
- d) Number of employees undergoing trainings in obliged entities and frequency.
- e) Level of knowledge of employees of obliged entities on ML/TF indicators and AML/CFT measures and requirements.
- f) Statistics and examples on the provision of feedback by competent authorities to obliged entities.
- g) Information from obliged entities on the quality, frequency and usefulness of feedback to information provided

Systemic Issues and Deficiencies

- 40. OEs in most Member States are taking measures and providing AML/CFT training to their employees. However, the timeliness, relevance, and effectiveness of these trainings, including for banks, NBFIs, but particularly for DNFBPs, has been identified as a systemic deficiency in most Member States, trainings are not comprehensive nor of sufficient quality, with lack of discussion on emerging complex and innovative ways of ML for both financial and non-financial sectors, or not reflecting risks identified in line with the NRA, SNRA and sectoral risks. Trainings are mostly found to be generic i.e., developed at a uniform level for all sectors and not tailored to the business models of specific OEs or categories of OEs. Consequently, the effect of trainings in most of these Member States has been found to be limited in enhancing the knowledge and understanding of OEs, particularly DNFBPs and NBFIs, on the ML/TF risks facing their sector.
- 41. Limited or no sector-specific guidance or reference material has been provided by the competent authorities to OEs in some Member States, especially to the DNFBPs sector, detailing the indicators to identify or report ML/TF suspicions. In two (2) Member States lack of regular update on TF indicators to OEs has been identified as a particular concern by the review team.
- 42. OEs in some Member States have not been provided updated guidance or materials from their respective competent authorities on emerging ML/TF trends and typologies within their sectors – the practice is particularly relevant for DNFBPs sector but also affects FIs. This implies that analysis products provided by the competent authorities are of limited benefit to the OEs for the purposes of adjusting their internal AML/CFT policies and performing EWRAs.
- 43. A large number of Member States do not have an established formal procedure or mechanism to provide specific and sufficiently detailed feedback to the OEs, both within the financial and non-financial sector, on their submitted STRs. This means that the OEs are not usually informed about the quality and effectiveness of their STRs, particularly on how they could enhance their quality, where required. In most Member States, the practice which is mainly limited to larger FIs is to provide informal generic feedback to OEs during meetings or on-site inspections. In some Member States, OEs are only informed when a case is opened based on the STR, or on its dissemination to LEAs, or when additional information is required from the OEs. Such a practice is of limited value for OEs to improve the quality of their STRs.
- 44. Only in one (1) Member State, OEs, both within the financial sector and DNFBPs sector, have been found to lack clear understanding of the role of senior management in ensuring compliance with the AML/CFT obligations and have been identified as deficient in ensuring OEs appoint senior management board member responsible for the implementation of AML/CFT obligations.

45. Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 46 are listed below:

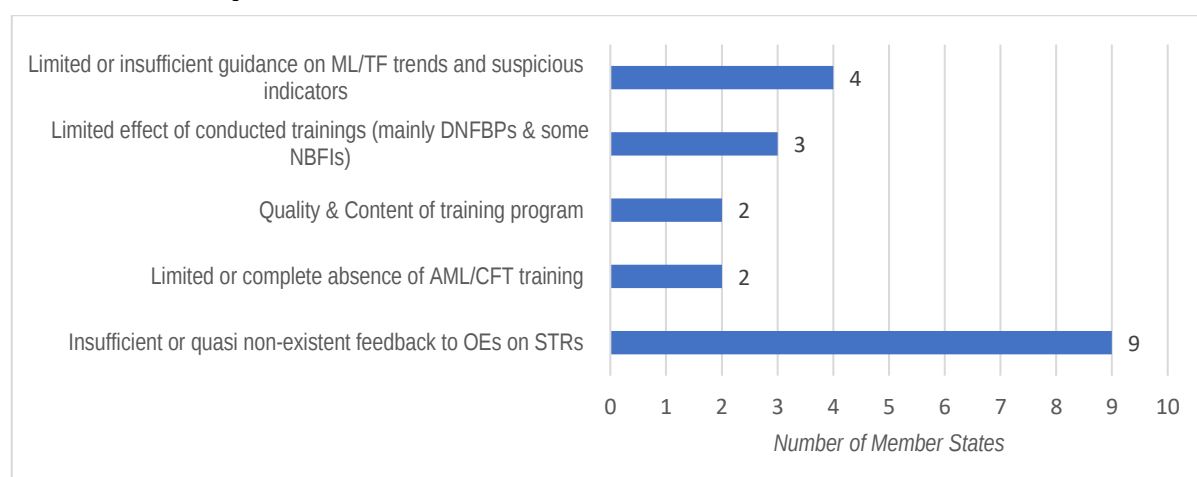


Figure 9. *Typologies of major deficiencies, Article 46 (training and feedback)*

46. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 46 include the following:

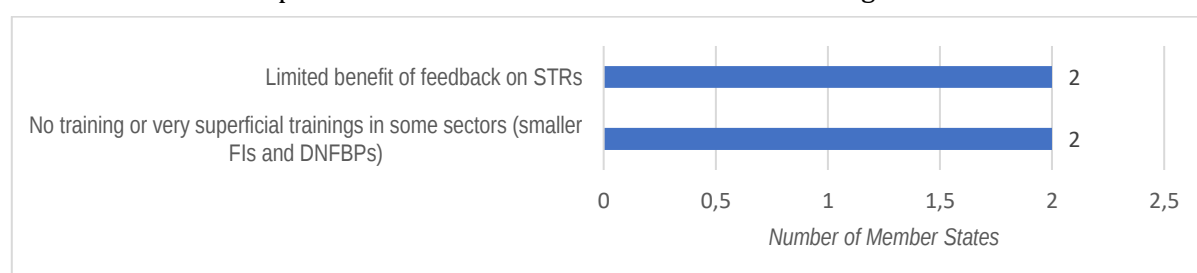


Figure 10. *Typologies of limited deficiencies, Article 46 (training and feedback)*

Legal requirements and practices that impact implementation

47. Incomplete transposition of Article 46(5) into the national provisions of some Member States, which is not remedied by other means, has a significant effect on its practical implementation. In one of the Member States, the FIU is only required to notify the concerned OE on its STR when it has been disseminated to LEAs and such a notification should be given within 30 days from dissemination. There is no other requirement on the FIU to provide detailed feedback, including on the content of the STR, to OEs, enabling them to improve the quality of their STRs.

Good practices

48. Some of the good practices observed in some Member States include:
- The establishment of public-private partnerships in some Member States with representation of the largest commercial banks and other relevant stakeholders, to convey critical information and to ensure the effective exchange of information on new and emerging ML/TF trends and typologies and red flags (including sharing NRA specific ML/TF suspicious indicators), which has been found as an effective mechanism and good practice to ensure that OEs have up-to-date information about ML/TF risks in their sectors and on indications leading to the recognition of suspicious transactions.
 - A practice has been established to provide annual feedback to all main OEs on their STRs informing them on their outcome, giving feedback for each STR filed

including the underlying suspicion and allocating an individual score, which is based on the quality of the information provided. In particular, the aspects considered in this quality assessment includes KYC analysis, time frame, ML/TF indicators and supporting documentation. This is identified as a good practice with respect to providing comprehensive feedback on STRs; however, the timeliness of feedback might still be an issue.

- c) Employee training programmes are made available to the supervisors on an annual basis through annual compliance report and verified during both on-site and off-site inspections.

Compensatory Measures and Detrimental Factors

49. N/A

Conclusion – Article 46

- 50. In thirteen (13) Member States, major deficiencies have been identified on the effective implementation of Article 46; only limited deficiencies were identified in eight (8) Member States whereas both major and limited deficiencies were identified in four (4) Member States. In two (2) Member States, no deficiencies have been identified.

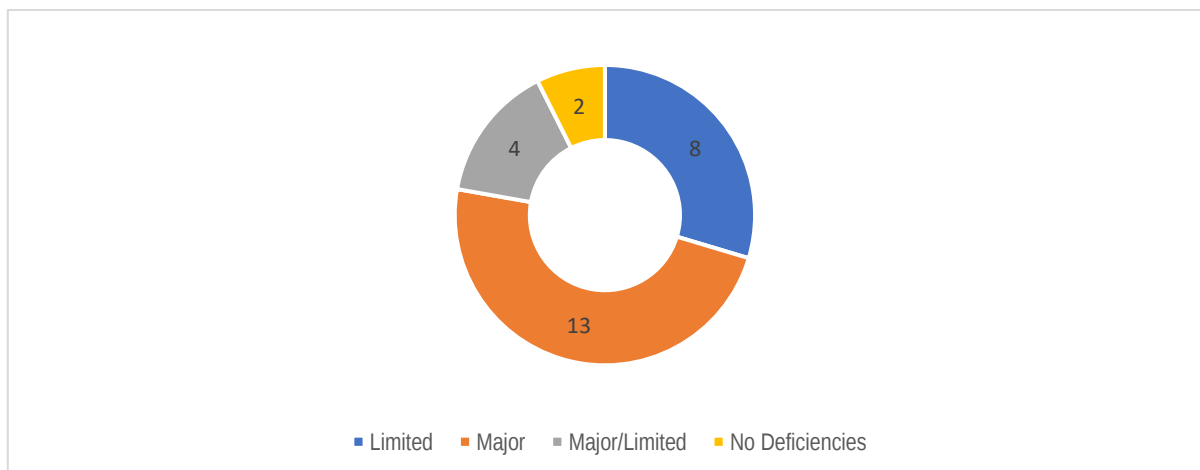


Figure 11. Overall status of implementation, Article 46 (training and feedback)

- 51. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 46 in these Member States.

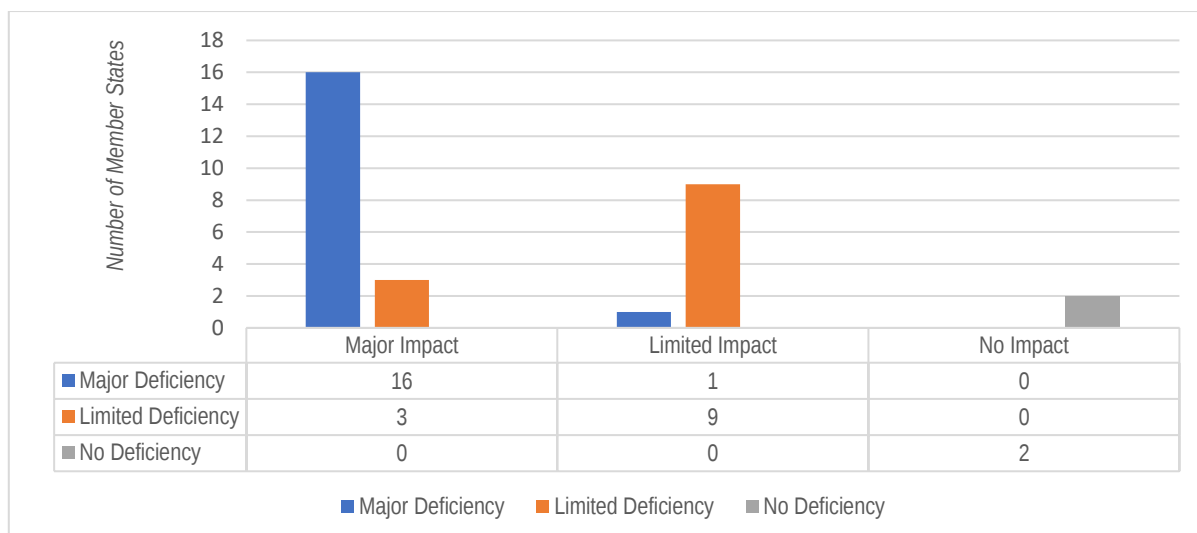


Figure 12. *Deficiencies and impact, Article 46 (training and feedback)*

52. Even though OEs in majority of jurisdictions are conducting AML/CFT training of their employees/staff, there is still a room for improvement in terms of timeliness, quality and relevance of these trainings. Additionally, competent authorities in some Member States need to put in more effort to give OEs sector-specific and up to date information on suspicious indicators and emerging ML/TF practices. The majority of Member States still need to set up institutional processes or mechanisms to provide OEs in both the financial and non-financial sectors adequate feedback on their filed STRs.

CHAPTER 3. Application of customer due diligence (CDD) (Articles 13.1, 14, 18.1-18.3, 20-23, 25-29)

Sub-theme (a): General CDD

Article 13.1

Introduction

53. Article 13.1 outlines the requirements which are related to customer due diligence (CDD). These requirements include identifying and verifying the identity of customers and their beneficial owners ("BOs"), assessing the intended nature and purpose of the business relationship and conducting ongoing monitoring, ensuring that transactions are conducted in line with the OE's knowledge of the customer risk profile, that the documents, data and information held are up to date, and that the measures OEs have taken in undertaking customer due diligence are appropriate in view of the risks of money laundering and terrorist financing.
54. Some of the major factors underlying effective implementation of Articles 13.1, that were checked as part of assessment process in line with the assessment methodology, included the following:
- a) Application of CDD measures commensurate with major ML/FT risks,
 - b) Application of the CDD measures by the banking sectors with substantial international exposure,
 - c) OEs' level of understanding of CDD obligations, including those dealing with beneficial ownership, across all financial institutions and DNFBPs and how it had been operationalised,
 - d) Whether steps were taken by supervisors to both raise awareness of banks to the ML/FT risks associated with investment-related insurance products and measures taken (some Member States),¹
 - e) CDD processes applied by regulated payment service providers (PSPs) and other entities to both new and existing customers and how supervisors evaluated their technical compliance and effectiveness of the controls used,
 - f) How ML/FT risks associated with new technologies were considered within the OEs' CDD activities,²
 - g) Whether guidance on the risks associated with such technologies was available and used, including typologies and case studies to support such detection efforts,³ and
 - h) Measures applied by DNFBPs, particularly the TCSPs, notaries and lawyers, real estate, high-value goods dealers and the gambling sector OEs.

Systemic Issues and Deficiencies

55. All Member States reviewed were found to have certain deficiencies related to their effective implementation of Article 13.1. Systemic issues and deficiencies where notable trends were detected are as follows:
- a) Deficiencies in CDD compliance, specifically in relation to customer identification on a risk-sensitive basis by OEs, were identified. OEs in some sectors employ measures

¹ Evaluated for some Member States only based on the scoping of risks for the assessment.

² Evaluated for some Member States only based on the scoping.

³ Id.

which appear designed to comply with the “letter of the law”, but do not effectively ensure that their approach taken towards identifying, and verifying BOs includes obtaining a clear understanding about the risks which may be associated with them.

- b) OEs are increasingly relying upon the data recorded on BO registers. Despite the 4th AMLD requirements that reliance shall not be placed solely upon this data, some OEs do not verify BO information using other independent sources of information. Reliance upon national registers was considered especially problematic in those Member States where the set-up of the BO registry is at an early stage or where its data is known to be either incomplete or inaccurate.
- c) The absence of information obtained on the nature and purpose of relationships prevents OEs from being able to establish a baseline against which a customer’s future transactions and account activity can be assessed.
- d) The DNFBP sector is lagging behind the banking sector in terms of its understanding and application of CDD requirements overall. Some financial institutions also show continuing challenges in applying a risk-based approach.
- e) In some Member States, DNFBPs from the professional sectors and real estate, in particular, show a lack of understanding and, in some cases, willingness to comply with CDD requirements. Some OEs such as those in the real estate sector believe that they should be able to rely upon other OEs such as banks or lawyers, with whom they share a mutual customer, to have fulfilled the CDD requirements, instead.

56. The main typologies of shortcomings identified by reviewers could be classified into the following:

- a) CDD Requirements – General failure or weaknesses in implementing Article 13.1 requirements,
- b) Beneficial Owner – Failure or weaknesses in identifying and verifying the identify of BOs,
- c) Reliance – Dependence on identification of BOs through use of self-declarations or reliance on other parties in payment chain to conduct CDD, and
- d) Rules vs Risk Based – Application of rules-based approach to conduct CDD, without regard to customer risk factors, including deficiencies towards verifying nature, and purpose of relationships and transactions.

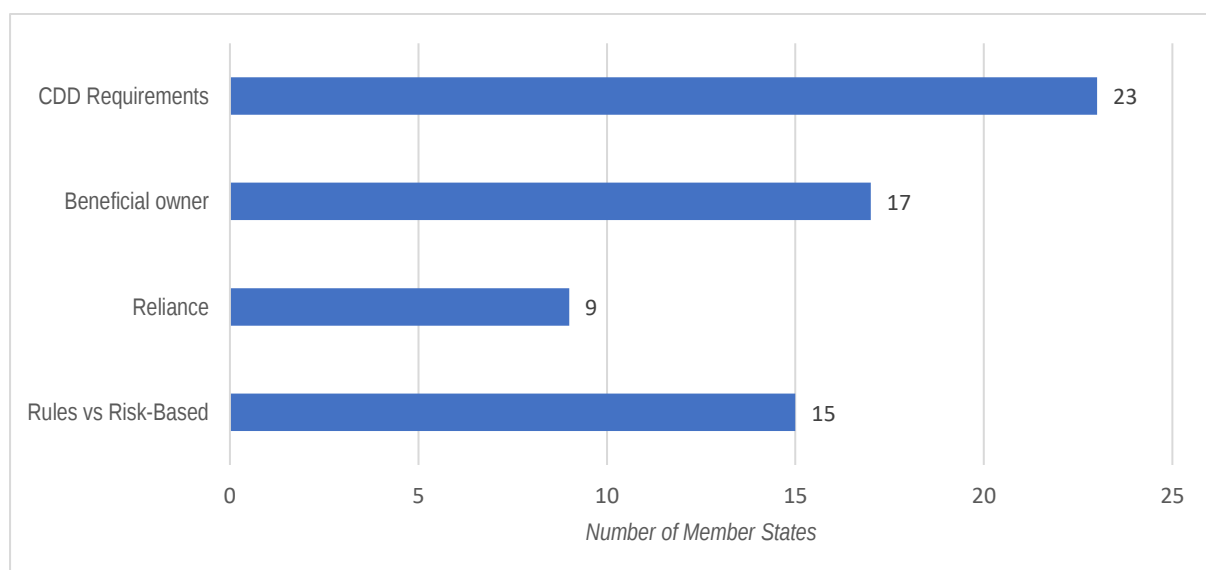


Figure 13. *Typologies of shortcomings. Article 13.1 (Customer due diligence)*

57. The most common typology concerned shortcomings in the effective application of CDD requirements overall. In total, twenty-three (23) Member States were found to have shortcomings based on this typology.
58. Additional specific shortcomings identified in relation to this typology in some countries included:
- a) Recurrent deficiencies identified during on-site examinations by supervisors in collection of required CDD records and their verification.⁴
 - b) Limited (as demonstrated during meetings) understanding of full CDD requirements in some sectors, particularly some TCPS, legal professionals, real estate, accountants, auditors and tax advisors.⁵
 - c) Over-reliance by some FIs on information provided by customers with no further verification checks on the purpose and intended nature of the business relationship.⁶
 - d) Failure by different OEs to assess and, as appropriate, obtain information on the purpose and intended nature of the business relationship.
 - e) Absence of practical guidance on the application of CDD requirements in some sectors (mainly excluding banks and credit institutions).⁷
 - f) There is limited published guidance from some Member State supervisors about the use of automated onboarding technology systems.
 - g) The information on the origin of funds is not systematically sufficient and the documentation is not always sufficient to corroborate the origin of funds.⁸
59. The second most common typology concerned shortcomings in the effective application of the CDD requirements concerning identification of BOs. In total, seventeen (17) of Member States were found to have deficiencies based on this typology. Other deficiencies identified in relation to this typology in some Member States included:
- a) In the case of individual customers, some OEs assume the BO is the individual applying for use of the product or service, without verifying this will be the case.
 - b) Lack of understanding of BO identification and verification requirements are compounded by the lack of a clear requirements for OEs to understand ownership and control structures in the case of corporate customers.
 - c) Some OEs also referred to challenges in identifying and verifying the identity of foreign BOs, notably those associated with complex ownership structures.
 - d) Over-reliance on company registry and register of beneficial owners for verifying the beneficial owner (issues with the accuracy of the information).
 - e) Concept of BO of foundations and trusts insufficiently understood. and
 - f) Some OEs apply a more formalistic, rule-based approach to CDD, compared to banks.
 - g) Over-reliance of some OEs on third party statements regarding UBO (particularly of trusts).
60. The third most common typology concerned shortcomings in the effective application of a risk-based approach towards the effective implementation of CDD. In total, fifteen (15) Member States were found to have deficiencies based on this typology. Other specific shortcomings identified in some countries in relation to this typology included:

⁴ Several assessments.

⁵ Several assessments.

⁶ Several assessments.

⁷ Cited in five Member States assessments.

⁸ Several assessments.

- a) OEs not going beyond basic client identification and verification measures, not conducting a complete range of CDD measures systematically.
- b) Limited application by many categories of OEs (with the exception of banks) of the risk-based approach using sufficient range of risk factors to establish risks at customer level (with the exception of banks).
- c) Some OEs undertake the BO verification, without assessing the overall risks that may exist relating to the control and ownership structure of corporate customers.

Example: In one sector in a Member State, reviewers note that the concept applied for BOs differs between similar OEs. Some apply a static threshold (10 – 25%) before identifying and taking reasonable measures to verify the identity of such BOs. There were concerns raised in the review if reasonable measures to understand the ownership or control structure of the customer are implemented where such OEs refer to their general knowledge of the customer and of “who’s in power”, and not to a structured approach in establishing and maintaining such an understanding.

- d) Lack of sufficiently effective control by some PSPs over the implementation of CDD measures and monitoring of transactions by their agents.
61. Aligned to the first typology, the final most common typology concerned shortcomings in relation to reliance by some OEs upon customer self-declarations to fulfil BO and CDD requirements. In total, nine (9) Member States were found to have deficiencies based on this typology.
62. While reviewers determined that twenty-five (25) of all Member States reviewed were found to have deficiencies across all or most OE sectors in relation to their compliance with Article 13.1 requirements, further analysis reveals some additional trends.

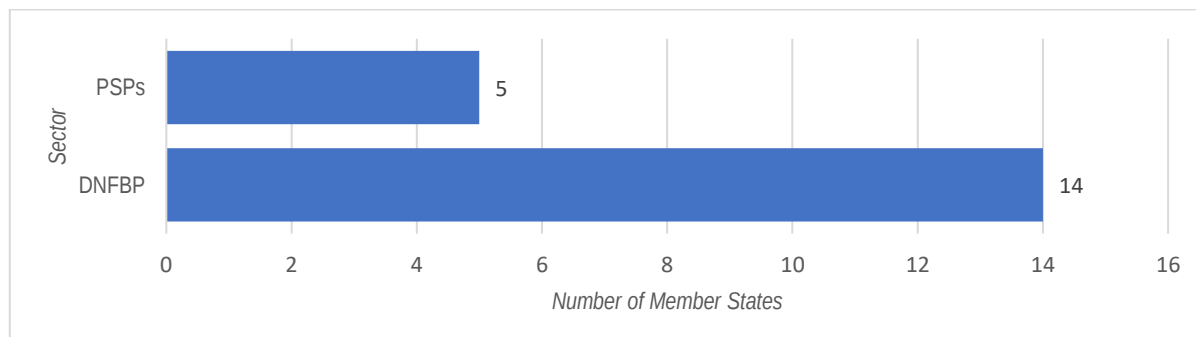


Figure 14. Additional trends on sectors affected by the deficiencies, Article 13.1 (Customer due diligence)

63. The above typologies were primarily identified with respect to the application of CDD measures by DNFBPs in fourteen (14) Member States reviewed. Among those, particular references were made to real estate, TCSPs, professionals such as lawyers, accountants, auditors and tax advisors. Specific reference was made to PSPs in five (5) Member States assessments.

Legal Requirements and practices that impact implementation

64. In most cases, where deficiencies of transposition remain, reviewers determined these deficiencies had a negligible effect on overall effectiveness. This is to say that where deficiencies were identified, they were attributable to the types of factors noted in the preceding section (systemic issues and deficiencies) not due to issues of completeness or non-conformity with the 4th AMLD.

Good practices

- a) Examples of good practices by some Member States identified by assessors on the effective implementation of Article 13.1 include:
- b) In a number of Member States banks, in general, follow a strict approach with regard to BOs, determining the purpose and intended nature of a business relationship, and perform ongoing monitoring of their customers in a risk-based manner.⁹
- c) In some Member States, OEs showed a good understanding of how to establish source of funds and demonstrated to have systems in place to monitor transactions.

Example: In an assessed country FIs and DNFBPs generally understand the obligation to ascertain the purpose and intended nature of the business relationship. They will look at the products the client is going to use, the expected amounts, turnover, cash amounts, incoming payments. The obliged entities will also use various commercial databases to obtain further information on the customer and its BO.

- d) In some Member States, reviewers found that OEs fully understood the need to identify persons acting on behalf of another and this was appropriately documented in practice.
- e) In some Member States, supervisors have worked closely with OEs who have been leveraging technology, to ensure that onboarding procedures can comply with CDD requirements.

Example: In one Member State, innovative financial companies, whose services are mostly offered over the internet, show familiarity with tools aimed at identifying and verifying customers in alternative ways, and use them consistently. They report keen interest and are participating in discussions with authorities about tools that would offer a strong CDD process also without face-to-face engagement, and report of authorisations processes, controls, follow-up procedures and sanctions against them in case of non-compliance.

Compensatory Measures and Detrimental Factors

65. Some of the compensatory measures and detrimental factors identified in relation to the effective implementation of Article 13.1 were as follows:
- a) Some reviews considered the general reliance on customer self- declarations and on the data in the Commercial Register for BO information has an adverse impact on the effective implementation of Article 13.1 and other CDD related Articles due to lack of verification and accuracy of data (see further below).
 - b) In several assessments, it was noted that the current state of the national BO register, where findings that the data on them was inaccurate, incomplete or not verified by competent authorities, had a corresponding impact upon OE's ability to effectively conduct CDD on the BOs of domestic legal entities. In total, seventeen (17) Member States reviewed identified this as a factor which impacted negatively upon CDD.
 - c) The informal reliance of some categories of DNFBPs upon the CDD conducted by other categories of OEs (e.g. banks) due to resource constraints, limited awareness of obligations or other factors was widespread among the countries with major deficiencies affecting the DNFBP sectors.
 - d) In some Member States, supervisory tools used to collect information about CDD compliance do not allow the collection of information to assess whether automated onboarding technology systems used by OEs are operated in compliance with CDD provisions.

⁹ Includes larger banks in three Member States.

- e) In one (1) Member State, PSPs were found to apply a threshold of €200, €600 or €3,000 before certain CDD measures would be performed. This created the risks that PSPs would not adequately identify higher risk where customers perform transactions below these limits.

Conclusion

66. Overall, twenty-one (21) Member States reviewed were found to have only major deficiencies across all or most of OE sectors in relation to their compliance with Article 13.1 requirements. Six (6) Member States were found to have only limited deficiencies.

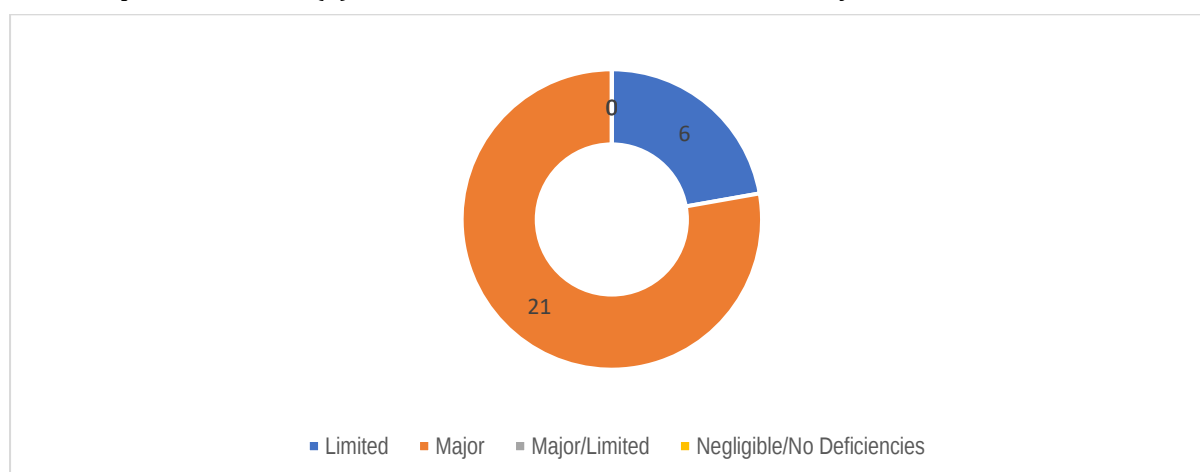


Figure 15. Status of implementation, Article 13.1 (Customer due diligence)

67. Twenty-one (21) Member States were found by reviewers as having deficiencies with a major impact on their effective implementation of Article 13.1's requirements.

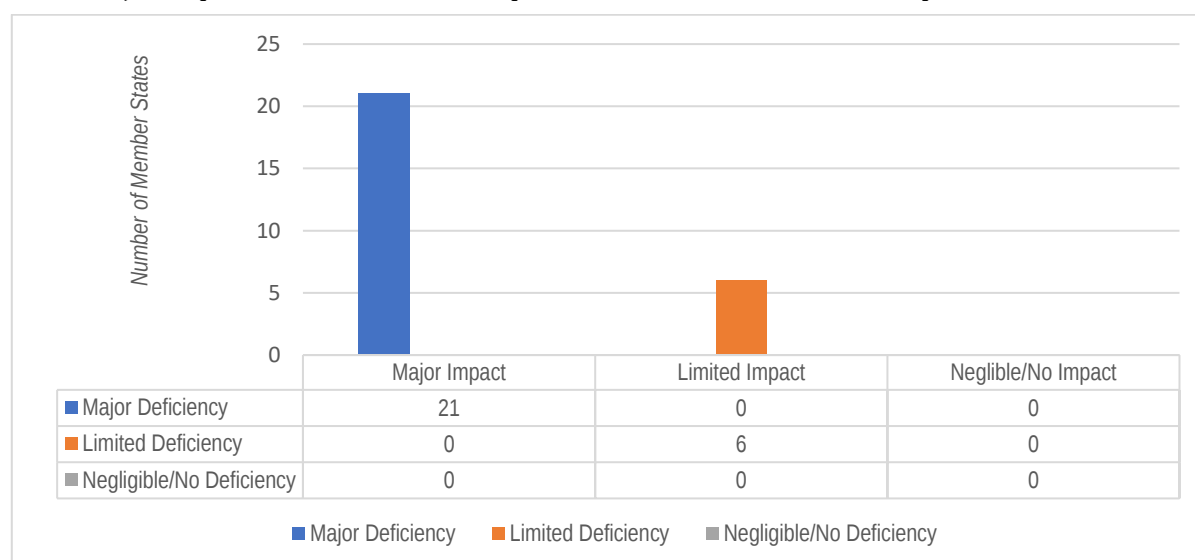


Figure 16. Deficiencies and impact, Article 13.1 (Customer due diligence)

68. The effective implementation of CDD measures is the cornerstone of AML/CFT controls. Where this information is inaccurate or incomplete, this can have of corresponding effect on the accuracy of risk ratings assigned to customers and in turn, the level of monitoring and review undertaken during the lifetime of a business relationship.
69. Overall, the assessments confirm that most banks and credit institutions have a more mature understanding and application of these requirements. However, other financial institutions and, in particular, DNFBPs, continue to struggle to fully understand how to

apply CDD requirements in an effective way. The DNFBP sector appears to continue to face challenges in applying the requirements of Article 13.1, and to a lesser extent, PSPs. The identified deficiencies may, in part, be attributable to the supervisory deficiencies. Some OEs' limited understanding and application of the risk-based approach appears to be caused by a lack of understanding about how to operationalise these requirements. The absence of a clear direction on the part of supervisors as to the acceptability of reliance upon self-declarations concerning BO identification and entity and national registry information, further compounds deficiencies in this area. Further work is needed by supervisors in these sectors to raise the level of awareness about these requirements and guide OEs in how these are relevant to ensuring an effective risk-based approach in the detection and prevention of financial crime.

Article 14

Introduction

70. Article 14 requires that several CDD measures be undertaken when establishing and maintaining a relationship or conducting an occasional transaction. These include the Verification of a customer and BO's before the establishment of a business relationship or the carrying out of a transaction, subject to certain derogations, and the requirement to refrain from a transaction or business relationship and consider filing an STR, as well as the application of CDD at appropriate times to existing customers on a risk sensitive basis.
71. Some of the major factors underlying effective implementation of Articles 14 that were checked as part of assessment process in line with the assessment methodology, included the following:
 - a) Application of CDD measures to existing customers, in particular, initiation of reviews and operationalisation of these requirements by OEs, and
 - b) Measures applied by DNFBPs, particularly the TCSPs, notaries and lawyers, real estate, high-value goods dealers and the gaming sector OEs
 - c) Extent and consistency of application of the risk-based measures towards all categories of customers (e.g. foreign and domestic, specific situations where de-risking is the preferred procedure, etc.);
 - d) Nature and frequency of refused business relationships;
 - e) Level and nature of CDD-related regulatory measures and sanctions to financial institutions and DNFBPs;
 - f) The level of application of the requirements by the different categories of obliged entities in cases of any outsourcing arrangements or use of new technologies.

Systemic Issues and Deficiencies

72. Overall, all Member States were found to have deficiencies related to their effective implementation of Article 14. Systemic issues and deficiencies where notable trends were detected are as follows:
 - a) CDD review. Some OEs continue to have difficulties in implementing existing CDD reviews of existing customers on a risk-basis, either by establishing time periods for reviews which are not sustainable relative to resource and capacity or longer review periods which have prevented the timely detection of changes to a customer's existing CDD information or risk profile, and
 - b) Submitting STRs. Some OEs do not demonstrate a clear understanding about the need to consider filing an STR when a decision had been made to terminate a business relationship or not proceed with a transaction.

- c) All Member States were found to have deficiencies related to the effectiveness of the measures used to comply with Article 14. The main typologies of shortcomings identified by reviewers could be classified into the following:
- i. Review and Monitor – deficiencies in effectiveness relating to transaction monitoring or review of existing customers, and
 - ii. Reject and Report - Failure or weaknesses in not proceeding with transactions or ending business relationships where unable to comply with Article 13.1 and consider making a suspicious transaction report.

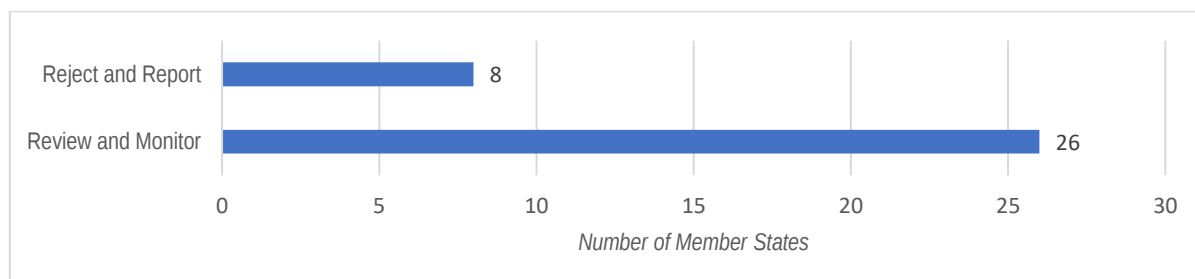


Figure 17. *Typologies of shortcomings, Article 14 (Customer due diligence)*

73. The most common typology concerned shortcomings in OE's overall effectiveness in conducting monitoring and review such that CDD is applied at appropriate times to existing customers on a risk sensitive basis, including at times when the relevant circumstances of a customer change. In total, twenty-six (26) of Member States reviewed were found to have shortcomings based on this typology. Other shortcomings identified in relation to this typology included:
- a) Banks regularly do re-apply CDD requirements on a risk basis to existing customers, but as the supervisor has not issued any specific guidance on regulatory expectations in this regard, this has resulted in relatively uneven approaches by the OEs.
 - b) Some OEs continue to have difficulties in implementing existing CDD reviews, either by establishing time periods for reviews which are not sustainable relative to resources and capacity or longer review periods prevent the timely detection of changes to a customer's existing CDD information or risk profile.
 - c) Some OES still focus their monitoring on the specific services provided to the customer without an understanding and monitoring of the overall business and activity of the customer.
 - d) Changes to risk profile of existing customer may not be effectively captured by OEs in the case of legacy customers, which have been categorized improperly and have not been reviewed for a considerable time (approximately three or four years was the average timeframe indicated for the review of the CDD of low-risk customers).
 - e) Some OEs did not appear to appreciate that circumstances might arise during the life of business relationship (e.g. through ongoing due diligence or transaction monitoring) requiring application of the CDD measures.
 - f) Some DNFBPs, particularly legal and accounting professionals limit the monitoring of ongoing relationship by interpreting relations with the same customer as occasional transactions, creating potential risks as prior history is not seen, e.g. a pattern of repeated changes of legal ownership, or a track record of minor deficiencies in documentation which could raise concerns when viewed in total.
 - g) Lack of guidance from the supervisor about the application of CDD requirements to existing customers and in addition when to re-apply CDD on a risk basis.
 - h) Ongoing monitoring systems are not always adapted to risks and ML/TF materiality.

- i) Notable number of infringements identified by supervisors in different member states relating OEs monitoring of existing customers and transactions.¹⁰
- j) The other typology concerned shortcomings in the handling of circumstances when OEs were unable to complete CDD as required. Some of the shortcomings observed by reviewers included the following:
 - i. OEs in some sectors believe that it is sufficient to terminate a business relationship or not proceed with the transaction where CDD cannot be completed as required, without the need of considering whether an STR is to be filed with the FIU,
 - ii. In a limited number of reviews, it was reported that it appeared as if some OEs endeavoured to try and justify maintaining a relationship, when the obligation to not establish a business relationship due to insufficient or incomplete CDD would have been warranted, and
 - iii. Some OEs procedures were silent on the treatment of new customers where CDD could not be completed in compliance with these requirements.

Legal requirements and practices that impact implementation

- 74. Certain requirements under Article 14 had either not been fully transposed or were not in conformity with the Article's full requirements.¹¹ However, in most of these cases, assessors determined that these shortcomings had a negligible effect on overall effectiveness. This is to say that where deficiencies were identified, they were attributable to the types of factors noted in the preceding section (systemic issues and deficiencies).
- 75. There was at least one (1) Member State in which its provisions concerning simplified due diligence (SDD) raised concerns for reviewers over its practical application. In this case OEs are allowed to determine not just the "extent", but also the "applicability" of the CDD measures in a manner that is commensurate with the low risk identified. This has, in many instances, resulted in OEs not being required to identify and verify the beneficial owner under simplified CDD or for low-risk situations, which can be established by the OEs.

Good practices

- 76. An example of good practices on the effective implementation of Article 14 included the use of different methods by banks to undertake reviews, for example through a self-service environment (e.g. when the customer is requested to update CDD information before regaining access to mobile services), querying relevant databases (e.g. the Population Register), or manual updates (e.g. when the client is contacted by e-mail and asked in person to fill in the data update form). Other financial institutions advise on simpler yet relevant practices for risk-sensitive updates of CDD information on regular (e.g. semi-annual or annual) or ad-hoc (e.g. in case of unusual/ suspicious activities) basis.

Compensatory Measures and Detrimental Factors

- 77. Very few or no compensatory matters or detrimental factors were specifically identified by reviewers in relation to compliance with Article 14. The exception was in relation to SDD, as referenced above under legal requirements. In light of the fact that the fulfilment of this article's requirements are closely related and dependent upon the relevant CDD

¹⁰ Various assessments.

¹¹ For example, in one Member State the national provision stipulates that the obliged entity is obliged to complete the verification of identity of the customer and adoption of measures to verify the identity of the beneficial owner as soon as practicable after the customer is physically present at the obliged entity for the first time; lack of national provision requiring the customer due diligence measures to be applied at appropriate times to existing customers on a risk-sensitive basis.

requirements, reference can be made to those compensatory or detrimental factors referred to in the previous section (on Article 13.1).

78. In some Member States omissions in the review by supervisors of the application of customer due diligence requirements to existing customers were an important factor underlined by the assessors.

Example: In one (1) Member State (considering the materiality of the sector) concerns were particularly raised about the lack of guidance in the application of electronic identification and subsequently compliance of payment service providers with existing customer CDD requirements and the application of CDD under simplified due diligence onboarding processes in view of the limited oversight by supervisors.

Conclusion

79. All Member States reviewed were found to have certain deficiencies across all or parts of OE sectors in relation to their compliance with Article 14 requirements, with twenty-one (21) of these being assessed by reviewers as having a major impact on effective implementation. The remaining six (6) Member States were found to have lower rated deficiencies and impact. Deficiencies were identified across all sectors with no discernible pattern suggesting greater shortcomings in any one group of OEs.

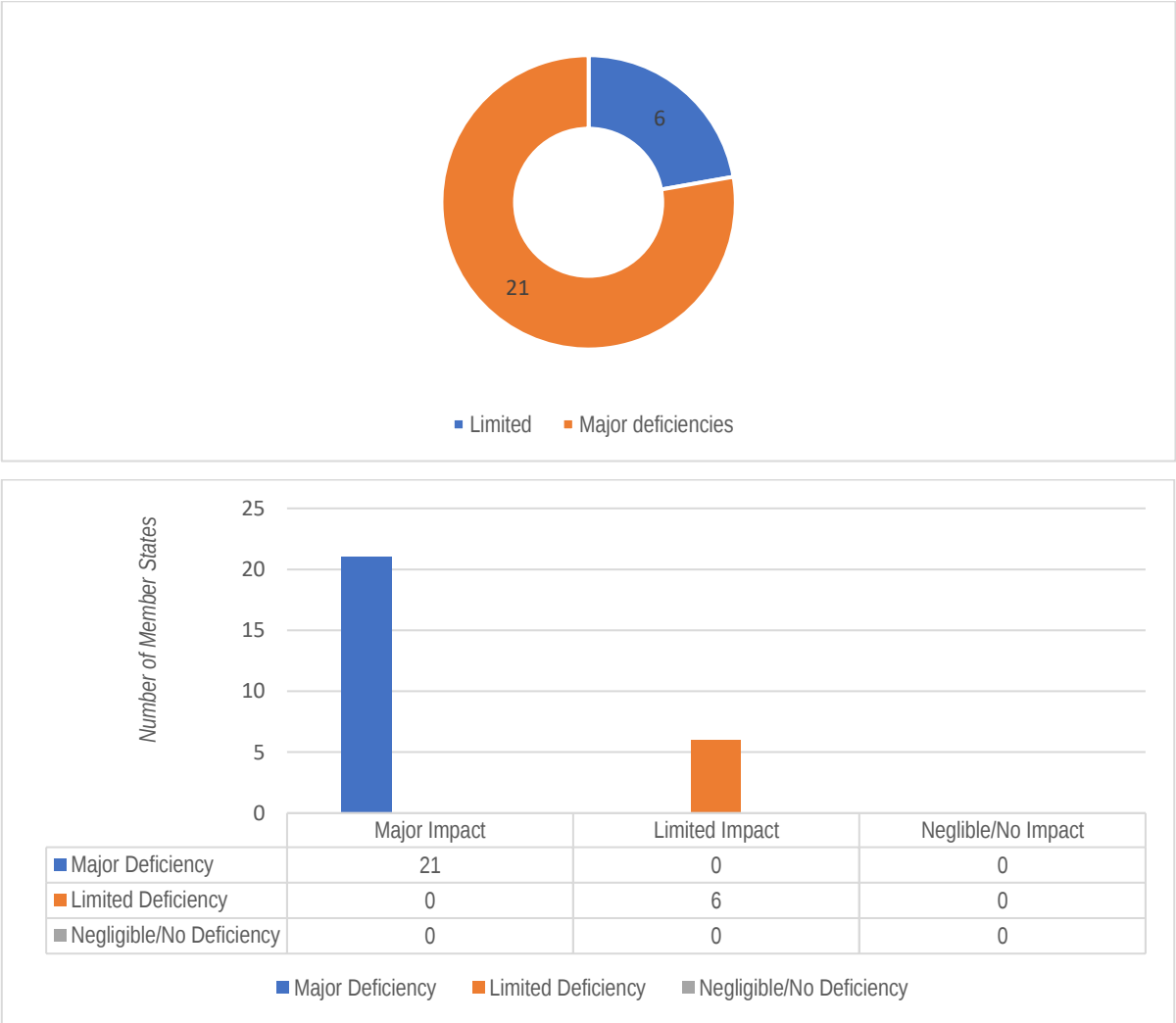


Figure 18 and 19. Status of implementation. Deficiencies and impact. Article 14 (Customer due diligence)

80. Weaknesses in review and monitoring controls expose OEs to the risk that a customer risk profiles may change overtime without detection. The need for a dynamic and risk-based monitoring control framework is essential for OEs to be able to detect or identify material changes and, where necessary, investigate possible suspicious behaviour. Non-compliance by OEs appears to be less the result of a reluctance to apply these controls so much as an overall lack of understanding on how to fulfil the obligations under this article effectively. OEs demonstrate an understanding of the requirement not to continue a business relationship where CDD cannot be completed. However, when there are concerns of money laundering or terrorist financing, there continues to be misunderstanding as to the requirement to also consider submitting an STR. This creates the risk that illicit actors may move between financial institutions or obliged entities within the same member state without detection, attempting to seek access to financial services.
81. Further guidance and engagement are needed by supervisors with various OE sectors on the scope of these requirements and how they should be operationalised in practice to ensure the effective implementation of Article 14.

Articles 18.1-18.3 – Enhanced Due Diligence

Introduction

82. Article 18 outlines the requirements related to enhanced due diligence and the treatment of higher risk customers and transactions (EDD). These requirements include application of EDD when dealing with natural persons or legal entities established in high-risk third countries, examining the background and purpose of all complex and unusually large transactions along with unusual patterns which have no apparent economic or lawful purpose, monitoring of business relationships in cases of higher risk to determine whether those transactions or activities appear suspicious, and the implementation of appropriate measures in the higher risk situations set out in Annex 3 to the 4th AMLD.
83. Some of the major factors underlying effective implementation of Articles 18.1-18.3 that were checked as part of assessment process, include the following:
 - a) Level of understanding of the relevant risk factors for the different categories of OEs,
 - b) Application of CDD measures vis-à-vis the major ML/FT risks to which the Member States is exposed, as well as any measures with regard to particular risk factors of horizontal nature for the EU like non-EU residents under citizen investment programmes (CIPs), voluntary tax compliance programmes and other tax schemes, misuse of corporate entities, etc.,¹²
 - c) OEs understanding of the differences between Simplified Due Diligence (SDD), standard CDD and Enhanced Due Diligence (EDD) and how these activities were applied in practice,
 - d) Undertaking appropriate measures in the case of outsourced CDD, and
 - e) Undertaking of enhanced due diligence in relation to high risk third countries and customers comprising complex structures.

Systemic Issues and Deficiencies

84. Overall, twenty-three (23) Member States reviewed were found to have deficiencies related to their effective implementation of Article 18. Systemic issues and deficiencies where notable trends were detected were as follows:
85. Scope and nature of EDD measures - Not all banks and other OEs are able to clearly define the measurable difference – other than obtaining senior management approval and

¹² Some Member States.

ascertaining the source of funds in case of foreign PEP relationships – between standard and enhanced measures in terms of the substance of additional information obtained and the outcome of more frequent monitoring applied in higher risk situations.

86. Limitations to RBA - While consideration of geographic risk is readily understood by most OEs, there are weaknesses in assessing product and services and delivery channel risks potentially associated with higher risk customers.
87. DNFBPs - Significant sectoral deficiencies were identified within the DNFBPs sector, including with regard to their SRBs. The shortcomings ranged across the topologies summarised further below. In some cases knowledge was very limited and in others there was a demonstrable absence of any additional measures applied, specifically for managing and mitigating ML/TF risks.
88. The main shortcomings identified by reviewers can be classified into the following typologies:
 - a) EDD Requirements – Failures or weaknesses in understanding the practical implications of applying EDD measures in case of higher risk,
 - b) RBA – Failures or weakness in the application of EDD by OEs in line with risks presented by business relationship or occasional transactions,
 - c) Standard CDD vs EDD – Failures or weaknesses in OE clearly defining the measurable difference between standard CDD and EDD measures in terms of additional information obtained and increased controls,
 - d) Jurisdictions – Failures or weaknesses in the identification of (certain) high-risk jurisdictions, and
 - e) Supervision – Lack of evidence or insufficient review by OEs of their compliance with EDD requirements by some AML/CFT supervisors.

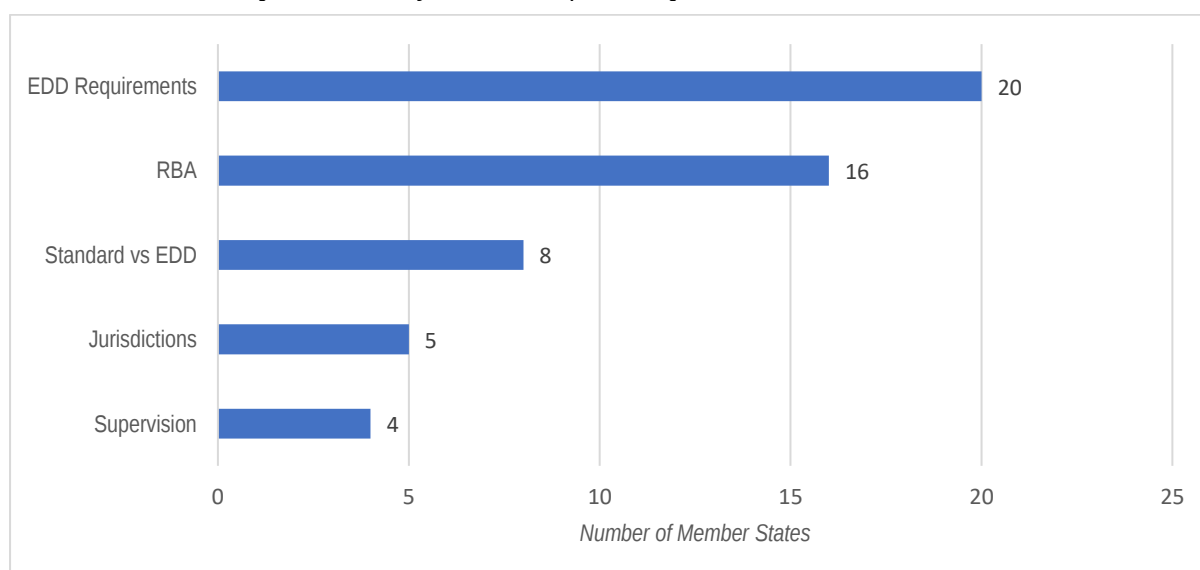


Figure 20. *Typologies of shortcomings, Articles 18.1 – 18.3 (Customer due diligence)*

89. The most common typology concerns shortcomings in the effective application of EDD where a “trigger” or high-risk indicator is present in relation to a business relationship or transaction. In total, twenty-one (20) Member States were found to have shortcomings based on this typology. Other related shortcomings identified included:
 - a) Limited understanding of the practical implications of applying enhanced measures or situations which would require EDD,

- b) Some DNFBPs interviewed did not have the same level of sophistication in the implementation of EDD. Measures described were often limited to obtaining senior management approval, and
 - c) Lack of awareness about the types of measures that could be used to undertake EDD and lack of inquiry by some OEs into customers' source of funds and wealth.
90. The second most common typology concerns shortcomings in the effective application of a risk-based approach towards higher-risk situations. In total, sixteen (16) Member States found to have deficiencies had shortcomings based on this typology. Other shortcomings identified included:
- a) Failure by some OEs to consider all relevant risk factors when applying EDD, with an over-emphasis on geographic risk and customer risk and little consideration of product or services and delivery channel risks.
 - b) Some OEs resort to refusing or terminating business relationships where there are indications of higher risk situations in lieu of applying enhanced measures to better understand those risks.
 - c) Some OEs fail to take a risk-based approach towards monitoring and examination of the background and purpose of all complex and unusually large transactions and all usual patterns of transactions.
 - d) Some Member States were found to have a specific deficiency related to both supervisor and OE limited consideration of risks created by citizenship by investment schemes (golden visas).
 - e) Inconsistent understanding across OEs as to the treatment of jurisdictions in terms of those that should be treated as higher risk. Some OEs understood this to require the classification of countries placed on lists generated by the European Commission or the FATF as high risk. Other OEs do not conduct their own assessment of geographic risk, while others still do not make reference to specific geographic risks identified in their Member State's NRA. These shortcomings were identified in five (5) Member States.
91. The third most common typology concerned shortcomings in the ability of OEs to clearly differentiate between the measures that would be applied for standard risk situations versus different or additional measures that would be applied in higher risk ones. In general, most OEs were able to explain the need for senior management approval as one possible EDD measure. However, other OEs were not able to define a measurable difference between standard and EDD measures in terms of the type of additional information they would obtain or the increased number or timing of controls they would apply both at onboarding and as part of ongoing monitoring.
92. Further analysis disclosed that these shortcomings were associated with DNFBP OEs, representing 10 of the Member States where deficiencies were identified. Specific reference in some assessments was made to real estate professionals, lawyers and TCSPs. Other sectors referenced in reviewers' findings included PSPs and gambling services. These latter OEs were referenced primarily in relation to their level understanding about the circumstances in which EDD measures should be applied.

Legal Requirements and practices that impact implementation

93. There were very few assessments in which the requirements under Article 18 had either not been fully transposed or were non-conforming with the Article's full requirements. In such instances, reviewers determined these deficiencies had a negligible effect on overall effectiveness. This is to say, that where deficiencies were identified, these were attributable to systemic issues and deficiencies, and not due to transposition or non-conforming deficiencies.

94. In several Member States de-risking was referred to as the preferred method to address high-risk situations for a range of OEs.

Good practices

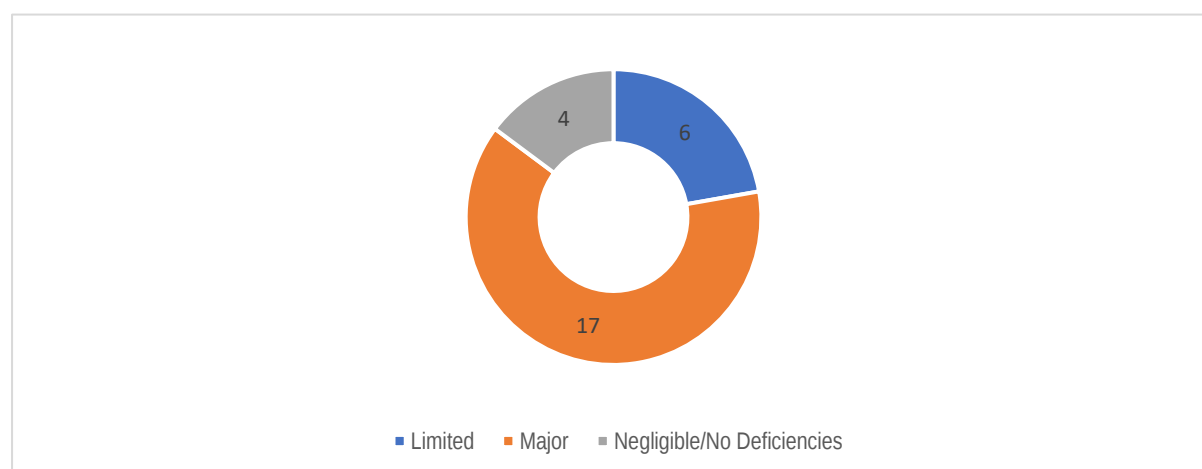
95. Examples of good practices by some Member States identified by reviewers on the effective implementation of Article 18 included:
- a) In some Member State assessments, OEs interviewed demonstrated a good working knowledge of the EDD requirements when dealing with natural persons or legal entities established in third countries identified by the European Commission as high-risk third countries.
 - b) In other Member State assessments, reviewers noted that OEs demonstrated a proactive approach in identifying countries that pose a high-risk and in the consequent application of risk-mitigating measures.
 - c) Larger banks mostly demonstrated an appropriate understanding of the situations where EDD measures would be applied to mitigate higher risks associated, for example with complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose cross-border relationships.
 - d) Banks, particularly the larger international banks, take a more advanced approach by applying dynamic (e.g. behaviour of the customer) risk factors and advanced well-tailored tools to identify higher risk situations where EDD measures are needed.

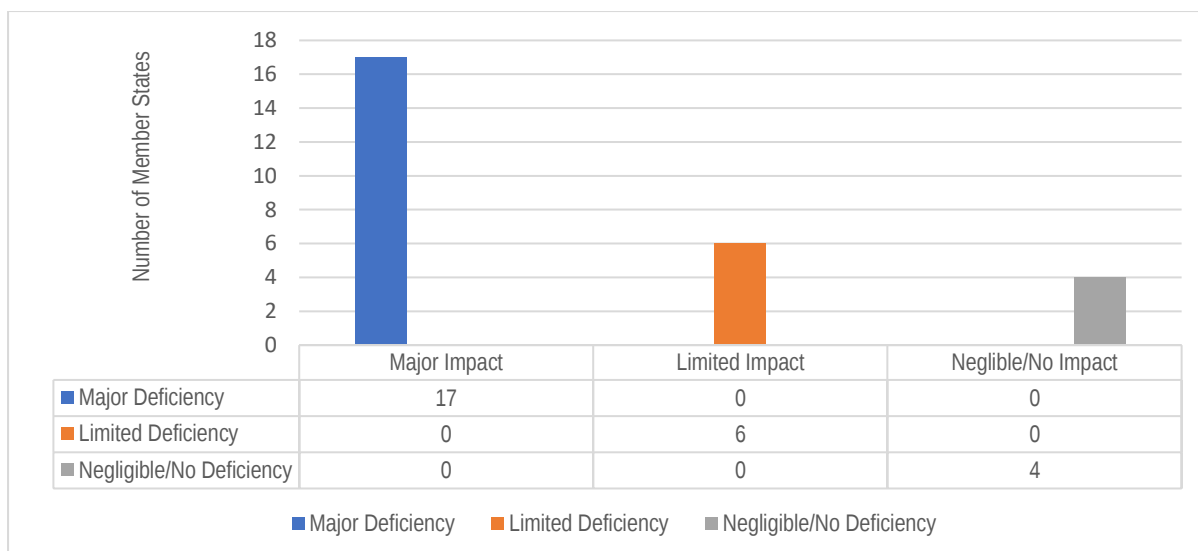
Compensatory measures and detrimental factors

96. A compensatory measure identified in relation to the effective implementation of Article 18 was the requirement for FIs in a Member State to obtain the tax declaration of every customer (natural person and legal entity) which clearly assists OEs in establishing the purpose and intended nature of the relationship with the client, mainly by providing an additional source of information regarding the source of funds and source of wealth.

Conclusion

97. Overall, seventeen (17) Member States were rated as having major deficiencies resulting in a major impact on the effectiveness of their compliance with Article 18. Six (6) Member States were found to have limited deficiencies with limited impact.





Figures 21 and 22. *Status of implementation and impact of the deficiencies, Articles 18.1 – 18.3 (Customer due diligence)*

98. The main systemic issues in relation to the effectiveness in the implementation of Article 18 relate primarily to some OE's understanding of how they should apply a risk-based approach towards the identification of high-risk situations and the types of measures they should apply to conduct EDD at onboarding and ongoing monitoring.
99. The less prescriptive nature of these requirements, as compared to those for PEPs, for example, means that OEs appear to need greater guidance and engagement from their supervisors about how they should apply these requirements to effectively mitigate higher risk situations. The number of deficiencies identified by supervisors in this area during onsite examinations and, in particular, the shortcomings noted above referencing DNFBPs, suggest that further work is needed within this sector to raise awareness and understanding about the risk-based application of these requirements.

Sub-theme (b): CDD for PEPs – Articles 20-23

Introduction

100. Articles 20-23 outlines the requirements related to politically exposed persons (PEPs). These requirements include the following measures:
 - a) With respect to transactions or business relationships *with* PEPs, Member States shall in addition to applying CDD in Article 13, ensure that OEs have appropriate risk management systems that include risk-based procedures to determine whether a customer or BO is a PEP, and
 - b) Where a customer or BO is identified as a PEP, an OE should (i) obtain senior management approval for establishing or continuing business relationships with such persons; (ii) take adequate measures to establish the source of wealth (SOW) and source of funds (SOF) involved in those business relationships or transactions and (iii) conduct enhanced, ongoing monitoring of those business relationships.
101. Some of the major factors underlying effective implementation of Articles 20-23 that were checked as part of assessment process in line with the assessment methodology, included:
 - a) The implementation of appropriate systems to determine PEPs based on relevant guidance and training as well as commensurate with risks,

- b) The availability and application of measures related to insurance policies,
- c) Appropriate measures to persons who are no longer entrusted with a prominent function,
- d) The application of appropriate risk-based measures to mitigate the risk associated with PEPs, and
- e) The application of the PEPs-related measures to both foreign and domestic customers.

Systemic Issues and Deficiencies

102. All Member States reviewed were found to have deficiencies related to their effective implementation of some aspects of Articles 20 - 23. Systemic issues and deficiencies where notable trends were detected were as follows:

- a) Where OEs rely upon PEP lists, their verification as to its accuracy was not always subject to regular monitoring and testing.
- b) No specific supervisory guidance or industry-wide feedback has been provided on the selection and oversight over the use of PEP lists.
- c) Over-reliance on commercial databases to establish a PEP relationship. Overall, concerns were raised particularly with regard to the adequacy of the measures taken by FIs to identify domestic PEPs as these are not necessarily included in commercial databases used for automated screening, and additional tools (open sources, Google searches et cetera) are insufficiently used by many FIs, where necessary and applicable, to complement the knowledge of local staff members.¹³
- d) No discernible deficiencies or trends were identified concerning the implementation of the requirements of Article 21.

103. The main shortcomings identified could be classified into the following typologies:

- a) Identify and verify – Deficiencies related to applying Articles 20 and 21 requirements,
- b) Close Associates – Failure to apply effective measures to identify and monitor close associates,
- c) Reliance – Over-reliance on customer self-declaration to identify PEPs,
- d) Subjective elements - applying a risk-based approach in understanding the nature of risks associated with PEP,
- e) Expire & reclass – Failure to apply operationalise requirements to declassify or extend classification of PEPs,
- f) Reliance – overreliance on vendor software as primary means of identifying PEPs, and
- g) Guidance - Lack of guidance for OEs on how to comply with data requirements including publication of national PEP list.

¹³ Several assessments.

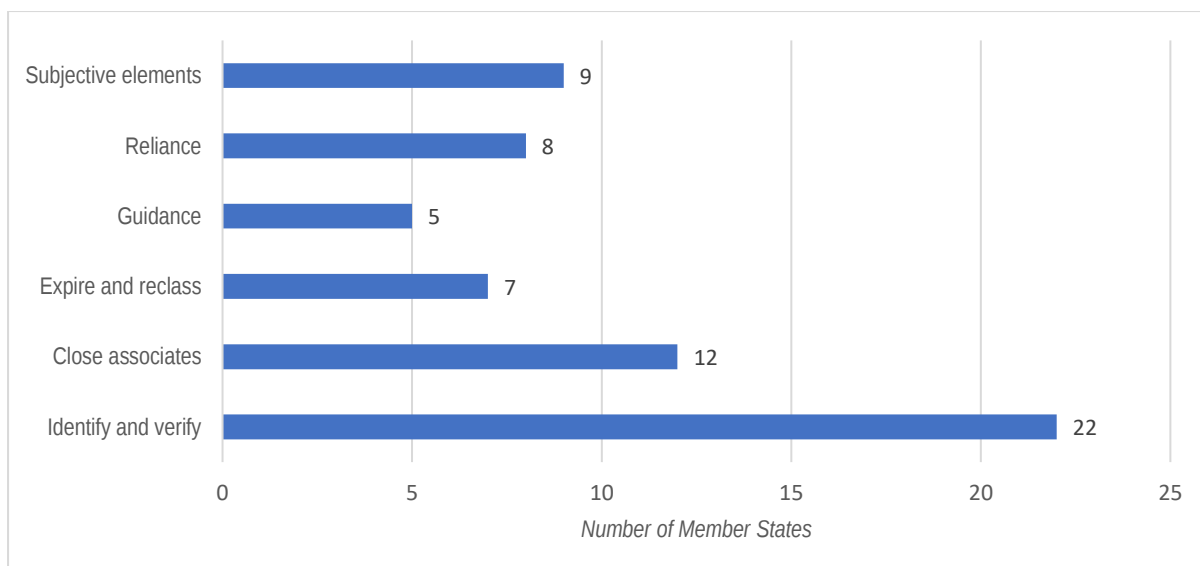


Figure 23. *Typologies of deficiencies, Articles 20-23 (Customer due diligence)*

104. The most common typology concerns shortcomings in the effective application of the identification and verification requirements. Shortcomings in relation to this requirement were identified in twenty-two (22) of the Member States reviewed. Other shortcomings noted in relation to this typology included reliance by some Member States upon self-declaration forms completed by customers, without further verification as to the status their status as a PEP. This shortcoming was identified in nine (9) Member States reviewed. Anecdotally, some OEs found the absence of a national list identifying roles considered to be classified as PEP, to make the identification of such individuals domestically more challenging.
105. The second typology concerns the identification and risk assessment of close associates. Shortcomings in relation to these requirements were identified in twelve (12) of the Member States. Other shortcomings noted included the absence of practical guidance to clarify for OEs how they should apply the requirements for the identification and verification of close associates, particularly given that such parties may not always be included on external vendor databases. This creates the risk that an OE may fail to detect close associates who can otherwise be identified through adverse media or other open-source data source.
106. The third typology concerns the effective implementation of the subjective elements of the Directive's requirements. These relate primarily to applying a risk-based approach in understanding the nature of risks associated with PEP. Shortcomings in relation to these requirements were identified in nine (9) of the Member States reviewed. Other shortcomings noted included some OEs focusing more on rules-based requirements, i.e. obtaining senior management approval, than in taking a risk-based approach in deciding what further information is needed to understand the nature of the risks associated with a PEP. In eight (8) jurisdictions there were concerns raised in the assessments with regard to the identification of source of wealth. In some jurisdictions, this deficiency was compounded by the fact that some AML//CFT supervisors appeared to focus more on the identification of PEPs than on whether OEs applied a risk-based approach to understand and mitigate the risks related to them.
107. The fourth typology concerns the effective monitoring of existing customers to both detect new PEPs and those PEPs whose classification had expired or required further extension. Shortcomings in relation to these requirements were identified in approximately seven (7) of the Member States reviewed. OEs were observed in several assessments to rely heavily

upon external vendor databases to detect such changes. Some OEs noted, for example, continuing challenges with aligning transaction monitoring alerts and PEPs within their customer base. As noted above, some OEs do not apply a risk-based approach. In some cases, OEs continued to apply the “once a PEP always a PEP” rule. Other OEs strictly applied a rules-based approach, whereby upon expiry of the 12-month period, individuals were automatically declassified as PEPs without further consideration of the remaining potential risk.

108. Further analysis of the above data disclosed that of these, nineteen (19) Member States were found to have deficiencies in all or most OE sectors concerning the effectiveness of compliance measures related to PEPs. Approximately eight (8) Member States were found to have these deficiencies mainly in relation to specific OEs in the DNFBP sector.

Legal Requirements and practices that impact implementation

109. The transposition analysis for a number of Member States identified certain requirements under Articles 20-23 which had either not been fully transposed or were not in conformity with the provisions of the 4th AMLD. Among those shortcomings, the following were assessed to have an impact on the effective implementation:
- a) Lack of specific provisions requiring OEs to have systems in place for identifying PEP customers, to establish the source of wealth and to conduct ongoing monitoring of the business relationship,
 - b) Legal requirements limiting verification of source of wealth and funds to transactions, and
 - c) The lack of requirement to apply EDD on a risk-sensitive basis until such time as that person is deemed to pose no further PEP-related risk.

Good practices

110. Examples of good practices by some Member States identified by reviewers on the effective implementation of Articles 20-23 included:
- a) Presence of risks posed by former PEPs is determined through analysing transactional behaviour of the customers (e.g. extensive use of cash, transactions with foreign counterparties, usage of cryptocurrency), broadly unrelated to their former PEP status, and publicly available information (e.g. adverse mass media publications),
 - b) Most supervisors include a review of compliance with PEP requirements as a part of their scheduled on-site inspections over OEs. Most supervisors who employed off-site examination methods, such as the use of annual reports in questionnaires, also requested information from OEs about the proportion of PEPs who formed a part of their overall customer base,¹⁴ and
 - c) OEs in the banking and TCSP sector in some Member States demonstrated a mature understanding of the ML/FT risks associated with PEPs and have invested time and resources into the development of onboarding processes which facilitate the detection of new customers and owners who may be PEPs.

Compensatory Measures and Detrimental Factors

111. Some of the measures and factors having an impact on the effective implementation of the PEP requirements are related to the over-reliance of smaller financial institutions and DNFBPs on client statements to make their PEP determination in the lack of other reliable sources of information. The high levels of reliance of some entities on CDD performed by

¹⁴ Various assessments.

other categories of entities is a factor contributing to significant PEP-related deficiencies identified amongst real estate agents, traders in goods and TCSPs. In some Member States there seem to be challenges with the application of the (various) definitions of domestic PEPs at local government level, which is impacting the effective implementation of the requirement.

Conclusion – PEPs

112. Overall, seventeen (17) Member States reviewed were rated as having major deficiencies resulting in a major impact on the effectiveness of their compliance with Articles 20-23. The limited deficiencies in three (3) other Member States were still identified to have a major impact (in view of the scope and materiality of the entities affected). The presence of major deficiencies with limited impact was identified in three (3) Member States.



Figures 24 and 25. Status of implementation and impact of the shortcomings, Articles 20-23 (Customer due diligence)

113. While most supervisors collect information from OEs about PEPs and include this topic as part of their onsite and off-site examinations, the deficiencies identified by reviewers suggest that more work is needed to ensure the effective implementation of these requirements. OEs’ understanding and application of these provisions requires improvement in the DNFBP sector in more than half of the Member States where deficiencies were identified. Greater emphasis is needed to ensure that OEs understand

how to apply the subjective elements of the PEP requirements and apply a more risk-based approach towards the assessment, monitoring and classification of customers and their owners as PEPs. OE reliance upon external vendor databases, while useful, do not effectively assist the detection of close associates, requiring that OEs receive further guidance from supervisors to more effectively detect and mitigate the risks associated with them.

Sub-theme (c): CDD related to performance by third parties - Articles 25-29

Introduction

114. The major factor underlying effective implementation of Articles 25 -29 checked as part of assessment process in line with the assessment methodology, concerned the extent and impact of reliance on third parties and the implementation of the specific conditions for mitigating the associated risks.

Systemic Issues and Deficiencies

115. Overall, only a limited number of Member States reviewed were found to have deficiencies related to their effective implementation of Articles 25-29. Most OEs reported they have elected not to place reliance on third parties to undertake CDD on their customers. Systemic issues and deficiencies where notable trends were detected were as follows:
 - a) The majority of Member States with deficiencies provided either services known for being associated with international finance centres or offered favourable tax arrangements for certain corporate entities and business types,
 - b) Member States with deficiencies fell into two broad categories: (i) Those who had formal reliance in place but failed to effectively implement the requirements of Articles 25-28, and (ii) those who relied on other OEs to have undertaken CDD on the same customer, but where that reliance was placed as a matter of course and not formalised as required under Articles 25 – 27.
116. In total, seven (7) Member States reviewed, were found to have deficiencies related to the effectiveness of the measures used to comply with Articles 25 and 27. As noted above, these could be divided into two groups. The main shortcomings identified by reviewers could be classified into the following typologies:
 - a) Effectiveness – Five (5) Member States had shortcomings in relation to OE’s effective implementation of third-party reliance requirements.
 - b) Application – Two (2) Member States had shortcomings in relation to OE’s understanding about and application of Article 25, 26 and 27’s requirements where they were placing reliance on other OE’s to have undertaken CDD on mutual customers.
117. Within the DNFBP sectors, real estate OEs were identified in two (2) Member State assessments as placing complete reliance for conducting CDD on lawyers and other parties who are identified as not fully complying with complete collection of CDD.
118. Shortcomings in relation to the investment sector were specific to one (1) Member State. Reviewers determined that some OEs failed to ensure that information could be obtained when requested from the relevant third party. This was particularly relevant owing to the complexity of the chain of parties involved, especially in the case of high-risk customers.
119. OEs in the PSP sector in two (2) Member States were identified as having weaknesses in their understanding and complying with third party reliance requirements. In particular, deficiencies were noted in PSPs’ employing controls to ensure that CDD could be collected from third parties, as required.

Example: Real estate agents did not demonstrate knowledge on meeting the third-party reliance requirements and their reliance on third parties, is not producing the desired effect due to the lack of understanding of CDD requirements and insufficient focus on ML/TF risks by real estate agents.

Legal Requirements and practices that impact implementation

120. Minimal transposition shortcomings were identified concerning third party reliance requirements. In all such cases, reviewers determined these deficiencies had a negligible effect on overall effectiveness. This is to say that where deficiencies were identified, these were attributable to systemic issues and deficiencies and not transposition or non-conforming deficiencies.

Good practices

121. Examples of good practices by some Member States identified by assessors on the effective implementation of Articles 25-29 included:

- a) Banks and investment firms stated that they do not rely on introducers anymore and perform all CDD measures on the customer themselves,¹⁵
- b) Supervisors of banks and credit institutions regularly review compliance with these requirements as part of both on-site and off-site supervisory activities,¹⁶
- c) Overall, reviewers reported a strong understanding on the part of all OEs about the requirements related to rely upon information provided by a third party which is part of its same group of entities. This was noted in relation to where such arrangements were present, and, in particular, banks and credit institutions.¹⁷

Example: In a Member State the supervisor's policy and practice is to expect that OEs wishing to rely on third parties have a robust reliance arrangement, including an AML Letter of Assurance, with an acknowledgement that the third party entity is aware the obliged entity is placing reliance on it for the purposes of CDD of the underlying customer and that there is no conditional language included in the letter that would restrict the third party's ability to provide CDD documentation and information to the obliged entity upon request.

Compensatory Measures and Detrimental Factors

122. Compensatory measures identified by reviewers in relation to the effective implementation of third-party reliance requirements were as follows:

- a) In most Member States, particularly amongst banks and other FIs, third party use is well understood as being higher risk and carrying special obligations,
- b) In at least two (2) Member States, the risks associated with third party reliance are addressed by restricting certain OEs from being able to rely on the third party. The AML/CFT legislation does not allow OEs outside the banking sector to use third parties for CDD, and

¹⁵ See Spreadsheet – third party reliance – displaying those Member States where reliance was observed.

¹⁶ Various assessments.

¹⁷ Various assessments.

- c) In several assessments, supervisors are reported to pay special attention to third parties, actively monitor cases in which reliance is used.¹⁸

Conclusions (Third Party Reliance)

123. In total, there were seven (7) Member States in which deficiencies were identified in the effective implementation of Articles 25-28, the majority of which rated as having limited impact on overall effectiveness (only two (2) Member States whose deficiencies were assessed as having a major impact).

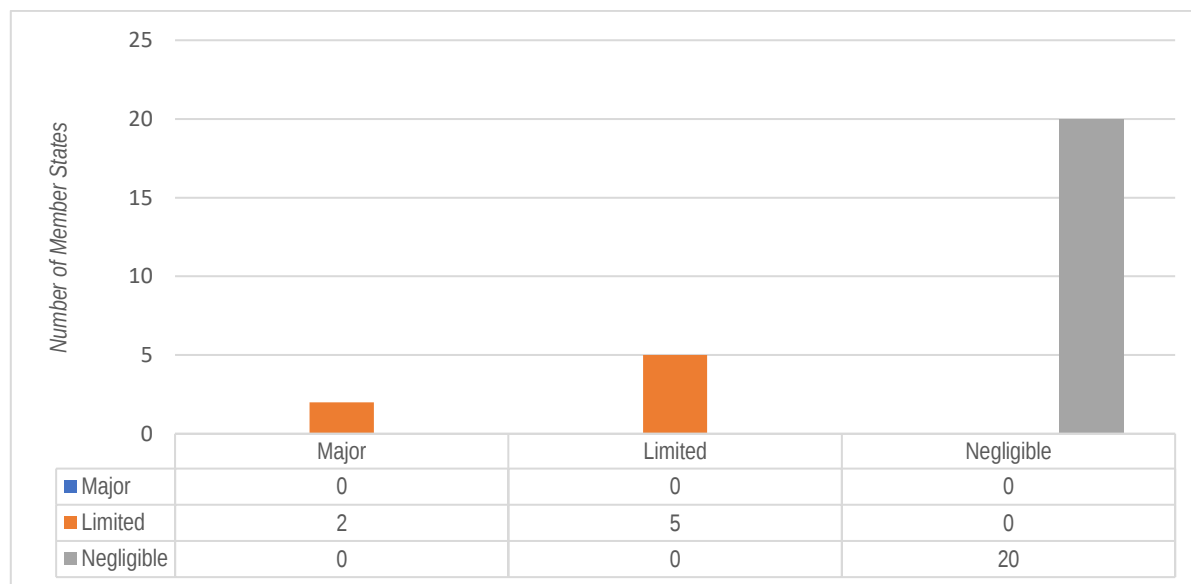


Figure 26. Deficiencies and their impact, Articles 25-29 (Customer due diligence)

124. Despite only 25% of Member States reviewed having deficiencies, further improvements are needed to ensure that sectors which are currently not complying with third party reliance requirements, understand the importance of them in the detection and prevention of financial crime. Closer supervision regarding reliance arrangements in both the investment and PSP sectors in the relevant Member States may be warranted to ensure that reliance arrangements are reliable and fully meeting all of the Directive requirements.

¹⁸ Various reports.

CHAPTER 4. Application of transparency of beneficial ownership and registration for legal persons (Article 30) and for legal arrangements (Article 31)

Sub-theme (a): Transparency of beneficial ownership and registration of legal persons

125. Some of the factors underlying effective implementation of Article 30, as per the 4th AMLD and the assessment methodology, include the following:
- a) Adequate requirements in place for all legal entities to obtain and hold adequate, accurate and current information on beneficial ownership of legal entities, the measures in place to verify and monitor their implementation, challenges in identifying use of non-professional nominees, any breaches of the requirements identified and sanctioned, and any challenges identified regarding information on foreign ownership.
 - b) Requirements on legal entities to provide BO information and any guidance issued to OEs.
 - c) Timely and adequate access to trust-related information by the FIU and other competent authorities.
 - d) Requirements to set up a central register with BO information, the authority responsible for keeping the central register, any additional resources provided, and the type of information (to be) included in the register.
 - e) The adequacy, accuracy and up-to-date status of the information on the Central Register, including the timeframe within which the information is required to be updated, measures to verify and monitor the information, and any breaches of the requirements identified, and sanctions applied.
 - f) Requirement relating to access to information in the Central Register.
 - g) Information on international exchange of BO information, including number of requests and number of requests approved as well as refused, information requested and provided, whether this is consistent with the country's risk profile, and the speediness with which the information is exchanged.
 - h) Any guidance and/or feedback to the OEs on the use of central register, reliance of the OEs on the central register, application of risk-based approach, experience of reporting entities with the use of the register, monitoring of OEs regarding implementation of BO requirements, and any breaches identified by OEs.

Systemic Issues and Deficiencies

126. In a large number of Member States, there is a lack of sufficient mechanisms or controls to ensure that the information provided by legal persons and legal arrangements during the recording and updating on the BO register is adequate, accurate and up to date. In those cases there is usually no initial verification of the submitted BO by any authority/agency to ensure its adequacy and accuracy. The onus is placed entirely on the legal persons and legal arrangements or their authorised persons to submit adequate and accurate information. Once the data is recorded, there is hardly any monitoring mechanism to verify or ensure that the information in the BO Register is kept up-to-date, adequate and accurate. Consequently, most of these registers have become 'good faith BO registers' – the adequacy and accuracy of which depends entirely upon the good faith placed in legal persons and legal arrangements or their authorised persons. In some Member States, new verification mechanisms have recently been introduced, which relate to cross-checking of BO data with other available registers and/or discrepancy reporting by OEs and competent authorities. However, since these measures have only recently been introduced, which are still to become operational in some Member States, it is difficult to determine the level of their

practical implementation and thus effectiveness in enhancing the quality of data on the BO register. OEs in some Member States are either not aware of or lack understanding of these newly imposed obligations relating to discrepancy reporting, as well as the reporting process.

127. In a number of Member States, the requirements for companies to obtain and hold adequate, accurate and up to date data on BO are either non-enforceable or there is a lack of effective monitoring of this requirement. There is no established mechanism to ensure that the legal persons are obtaining and maintaining adequate, accurate and up to date BO information, including details of beneficial interest, as required by law. Reliance has been mainly placed on OEs to obtain and make available BO information to the competent authorities.
128. In most Member States, there are sanctioning gaps, with limited range of possible sanctions for failure to comply with the BO requirements, which also do not appear to be dissuasive, effective and proportionate. There is either a lack of clear policy on applicable sanctions that would make it possible to determine whether such sanctions are proportionate or in some cases, the applied sanctions in practice are clearly not proportionate. While in one (1) Member State, there are no sanctions at all for legal entities that failed to obtain and hold BO information nor are legal entities formally required to remedy this situation, in another Member State, sanctions for non-compliance with the requirement to provide BO information are only available against capital companies. In a number of Member States, there is no coercive sanctioning mechanism for failure to report required data to the BO Register, which will have an impact on the effectiveness of the obligation on legal entities and the completeness and accuracy of BO data held on the register.
129. In a few Member States, central BO register for legal persons or legal arrangements does not exist. In some Member States, the BO register exists, but has not yet become operational or some elements of its operation are still to be clarified in secondary legislation or relevant instructions. In most Member States where the central BO registers do exist and have become operational, these registers have not been sufficiently populated.

Examples: In one (1) Member State, as of December 2020, only 17.48% of the active legal persons have registered their BO information in the central BO register.

In another Member State, as of November 2020, the central BO register was still incomplete with around 50% of the active legal persons in the State.

130. A concern has been raised by a few Member States on the existence of number of legal entities in the commercial register which have either been inactive, suspended or stopped their activities, and therefore not reported their BO information on the BO register affecting the completeness and quality of data in this register.
131. In some Member States, OEs have been given limited access to the BO register. Even not all competent authorities have been granted full access to all required information in the BO register.

Example: In one (1) Member State, the accessible data to OEs is only limited to the name, month and year of birth, state of residence and nationality, as well as the nature of the economic interest held by the ultimate beneficial owner and the extent of that interest, albeit only indicated in “bandwidths”. This means that OEs do not have access to identifiers such as the date of birth, the place of birth, the country of birth and the address of residence.

132. In most Member States, OEs face challenges in identifying and verifying BOs of legal persons and legal arrangements as a part of their CDD process, particularly in the case of complex ownership or control structures, when the foreign legal persons are involved or the BO is based in a foreign jurisdiction or is a foreign national. This is particularly relevant for

smaller OEs, in both financial and non-financial sector, who have limited understanding of the concept of BO and especially about 'exercising control via other means'. Another relatively widespread gap in the implementation of the BO requirements by OEs is related to the complete reliance on client's statements on BOs without independent verification of the information.

133. This limited understanding of OEs about the concept of BO and deficiencies in effectively implementing their BO requirements raises three concerns, which are as follows:
 - a) the effectiveness of a requirement in some Member States that obliges especially DNFBPs (such as notaries, lawyers, or accountants) to either submit or confirm the truthfulness of the BO data submitted on the BO register by the legal representative of the legal entity, depends largely on the level of understanding of the OE about the concept of BO and gaps in their knowledge and understanding would impact the quality of data on the BO register;
 - b) the effectiveness of the mechanism whereby competent authorities in most Member States rely on OEs to obtain and access adequate, accurate and up to date BO data of legal persons and legal arrangements in a timely manner; and
 - c) the extent to which OEs would be able to significantly contribute to remedying cases of lacking or unreliable information in the BO register and the effectiveness of the newly imposed discrepancy reporting requirements in most Member States.
134. In a number of Member States, there has been limited or insufficient outreach and guidance provided to the private sector, including companies, on the concept of BO, mechanisms to identify and verify BO(s), their obligations under the law, and the registration of BO information on the register. Significant challenges are reported by companies in identifying their BOs, especially in instances of complex ownership or control structures. This has an impact on the understanding of the private sector about the concept of BO and their reporting requirements, which in turn have an impact on the quality of information reported and maintained on the BO register.
135. In a number of Member States, no authority/agency has been designated or made responsible to verify and ensure the adequacy, accuracy and up-to-datedness of the data recorded on the Register. Lack of this designated authority have a significant impact on the quality and reliability of the BO data on the register, including limiting the opportunities to identify violations of the legal requirements if the data is not verified. In some Member States where such an agency/authority has been designated, the limited availability of sufficient resources, including financial, human and technical, seriously limits the effective performance of their verification responsibilities and thus the possibility for the BO register to become an effective system for enhancing transparency of BO.
136. In some Member States, the registrar or the relevant authority has limited ability to remedy deficient records or to take action against companies.

Example: In one (1) Member State, the registrar has no power to refuse to register any change of shareholders on the basis that appropriate BO information was not submitted, which could result in out-of-date BO data where no such corresponding information is submitted for change of BO. Registry Agency and competent authorities even have limited power to delete, correct or highlight incorrect or false BO information introduced into the BO registers.
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137. In some Member States, certain categories of legal persons are excluded from registration in the BO register, which in some cases has an impact on the completeness and useability of the register.
138. In a number of Member States, information on BO register is not considered accurate and reliable by most OEs, also by a few competent authorities, due to considerable variances in

the quality of data, which is either incomplete, inaccurate or out of date. Consequently, the active use of BO registers by OEs and competent authorities in these Member States is limited. Such a practice will have a significant impact on the possibility for the BO Register in these Member States to become an effective tool for the identification of BO and in the prevention of ML and TF.

139. Furthermore, an issue has also been identified by the review team in some Member States where some OEs, particularly in the DNFBPs sector and smaller NBFIs, placed a heavy reliance on the BO register to identify and verify the BO(s) of their clients as a part of their CDD process and for assessing risks of legal persons rather than conducting their own due diligence and requesting any supporting documents from the clients themselves. Such a practice would have a significant impact on the CDD processes of OEs, especially considering the insufficient verification mechanisms to ensure the adequacy, accuracy and currency of the BO Register, and the expected independent role of OEs in BO identification and verification.
140. Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 30 are summarised below:

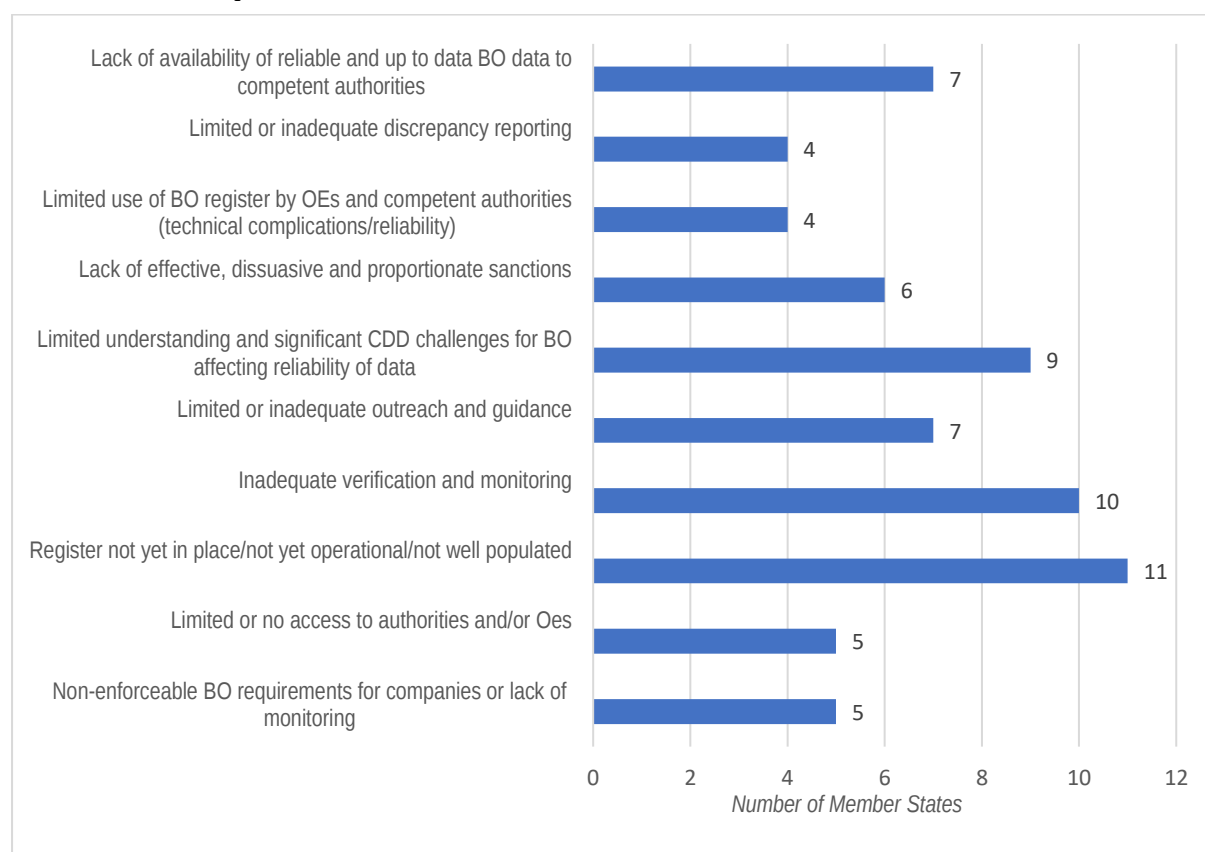


Figure 27. *Typologies of major deficiencies, Article 30 (Transparency of beneficial ownership)*

141. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 30 include the following:

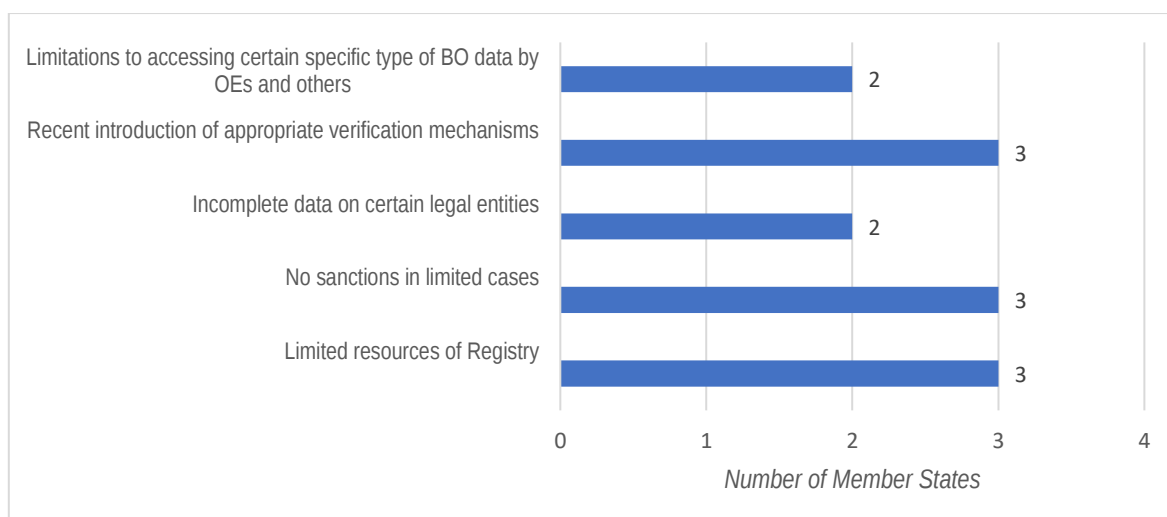


Figure 28. *Typologies of limited deficiencies, Article 30 (Transparency of beneficial ownership)*

Legal requirements and practices that impact implementation

142. In at least one of the Member States, there is no legal requirement for all legal persons and arrangements to hold a bank account in the Member State and it is unclear how many of them keep bank accounts outside of Member State, which will have an impact on the effectiveness of FIs CDD measures where they determine UBOs as well as the availability of BO information to competent authorities in a timely manner.
143. In at least one (1) Member State, the lack of details on the specific information that is required to be registered by legal persons and arrangements in case of direct or indirect ownership or control would impact the quality of BO information submitted on the register. There is no legal requirement in this Member State that legal intermediaries and percentages at each level of the ownership/control structure should be provided in case of indirect ownership through ownership of shares or voting rights or by other means. In case of direct ownership, it is not clear that the exact percentage of shares or voting rights should be registered. This lack of information to be provided impacts the effectiveness of the controls that are to be conducted by the Registrar during the registration process of the BOs.
144. The legal requirement limiting the full access of OEs to the BO information held on the BO register would impact the CDD process of these OEs as well as the quality of data on the BO register, for they might not be efficiently able to identify and report any discrepancies or inconsistencies in the registered data (e.g., Spain and Netherlands).
145. Lack of necessary powers given to the Registrar (or other authority) to prevent registration or proceed with the de-registration of front companies or to hinder the registration of straw men associated to companies would impact the quality and reliability of BO data and the transparency of beneficial ownership in practice.

Good Practices

146. Some of the good practices that have been observed in Member States on ensuring the transparency of beneficial ownership of legal persons include the following:
 - a) Some Member States require annual confirmation of BO data to ensure that the data is accurate and up to date.

- b) Most Member States have made the BO information on legal persons available to the general public free of charge, which has been identified as a good practice to enhancing the quality and reliability of the BO data.
- c) A monthly risk-based supervision and spot checks have also been initiated in two Member States to ensure the accuracy of the BO data. A sample of all reports to the BO register is being verified, including automated analysis of all reports for risk-scoring. The spot-checks are generally targeted towards specific categories of entities, that (a) are identified as high-risk entities in the NRA; (b) have legal owners in tax havens; (c) declared foreign BOs; (d) were registered by individuals known for previously filing false BO information; (e) declared that the BOs cannot be identified (and ultimately senior management is declared).
- d) In one (1) Member State a good practice has been observed that requires the establishment of a contact person in situations where management and ownership of a domestically registered legal entity or other legal arrangement is entirely non-resident to improve the provision of information by such subjects. The data on a natural contact person, who must be permanently resident within the Member State, shall be recorded along with the mandatory data in the BO register. The contact person is required to submit his notarized consent to this recording.
- e) In one (1) Member State, the visualisation facility in the BO register offers competent authorities and OEs with a very useful tool to obtain a quick overview of the ownership structure of a company and show its linkages with other companies and their owners/BO. The tool makes the searches in the BO and the investigative/analytical work significant easier.
- f) Enforcement of sanctions including administrative penalty which results in the loss of legal entity's tax clearance or being struck off from the register of taxpayers is identified to be an effective measure to sanction non-compliance.
- g) The introduction of the obligation for competent authorities and OEs in some Member States to report any discrepancies they find between the beneficial information available to them and the beneficial ownership information held in the registers supports efforts of the authorities to hold accurate beneficial ownership information.

Compensatory Measures and Detrimental Factors

147. Some of the compensatory measures identified in the Member States to ensure the effective implementation of Article 30 include the following:

- a) One of the compensatory measures adopted to ensure that the BO data is adequate, accurate and up to date include the submission of annual return by all companies regardless of whether they have a share capital or not. These annual returns provide an overview of the company with information on its members, directors, secretaries, registered office and other aspects. In case of failure to submit the annual return, pecuniary fines are applicable and, as ultima ratio, the company registrar may initiate the process to strike a company off the register. While the annual returns submitted do not contain any details on the BOs of the company, the auditor who approves these financial statements is required to know who the BOs are. Auditors are also subject to AML/CFT preventive measures and should therefore be in a position to provide, upon request of competent authorities, BO information on the companies they audit.
- b) In one (1) Member State, the lack of explicit requirement for corporate and other legal entities to hold current information on BO is compensated by the measures requiring the legal entities to collect and notify the BO information on the register.

Similarly, the lack of express transposition of the 4th AMLD¹⁹ requirement that access to the BO information by the FIU and competent authority be timely and that persons or organizations should have access to BO data is compensated by the fact that BO data held by the BO register is publicly available and accessible directly online.

- c) The transposition of provisions of the 5th AMLD in some Member States have allowed specific BO information held by the Registrar of Companies to be accessible to the general public, thus limiting the potential number of cases where persons defined in article 30(5)(c) 4th AMLD would have to satisfactorily demonstrate and justify a legitimate interest in order to obtain BO information.
148. Some of the detrimental factors that may impact the effective implementation of Article 30 in Member States include the following:
- a) Lack of relevant legislation that provides for sanctions to be imposed on legal persons and legal arrangements or their representatives for failure to hold up-to-date, adequate and accurate information on their UBOs.
 - b) Lack of specific designated authority tasked with (i) ensuring a consistent interpretation and implementation of the BO concept in the Member State destined to the legal entities, trusts and similar legal arrangements and (ii) taking the necessary measures to verify, to the extent possible, that the information registered by legal entities is up-to-date, adequate and accurate.
 - c) Lack of comprehensive sectoral-specific risk assessment of legal persons could have a detrimental effect on ensuring effective mechanism for enhancing the transparency of beneficial owners of legal persons, especially when legal persons and arrangements have been identified as high risk in the Member State's NRA.

Sub-theme (b): Transparency of beneficial ownership of legal arrangements

149. Some of the factors underlying effective implementation of Article 31, as per the 4th AMLD and the assessment methodology, include the following:
- a) Adequate requirements in place for all trustees to obtain and hold adequate, accurate and current information on beneficial ownership of a trust, the measures in place to verify and monitor their implementation, challenges in identifying non-professional trustees, any breaches of the requirements identified and sanctioned, and any challenges identified regarding information on foreign ownership.
 - b) Requirements on trustees to disclose their status and provide the trust-related information to reporting entities.
 - c) Timely and adequate access to trust-related information by the FIU and other competent authorities.
 - d) Requirements to set up a central register with trust-related information of tax consequences, the authority responsible for keeping the information, any additional resources provided, and the type of information (to be) included in the register.
 - e) Implementation of optional requirement to give timely access to trust-related information in the Central Register to reporting entities.
 - f) The adequacy and accuracy of the information on the Central Register, including the timeframe when the information is required to be updated, measures to verify and monitor the information, and any breaches of the requirements identified, and sanctions applied.

¹⁹ Based on the analysis of the transposition requirements by COM, 2019.

- g) Any guidance or feedback to the OEs on the use of central register, reliance of the OEs on the central register, application of risk-based approach, experience of reporting entities with the use of the register, monitoring of OEs regarding implementation of trust-related requirements, and any breaches by OEs identified.

Systemic Issues and Deficiencies

- 150. Many of the deficiencies identified under Article 30 above also apply to legal arrangements, including with regard to verification and sanctions.
- 151. In most Member States, trusts and similar legal arrangements, whether they are recognised in State or otherwise exist in the case of foreign trusts, are required to be registered either in the central BO register established for legal persons or a separate BO register for trusts. However, since these BO register for trusts or similar legal arrangements have only recently come into force or not yet operational in most Member States, as identified above for legal persons, it is difficult to determine their effective implementation by the assessors in these Member States. Nonetheless, in one (1) Member States, where this register has been operational for a while, the use of trustees falling outside the AML/CFT obligations (i.e., non-professional trustees) or located overseas is found to be not consistently captured in the BO registers. There are also limitations on the availability of BO information of trusts or similar legal arrangements to the general public.
- 152. In some Member States, central BO register for trust or similar legal arrangements has not yet been established nor there is a requirement to provide this information on the central register established for legal persons. In such Member States, competent authorities mainly rely on OEs for obtaining BO information on trusts and similar legal arrangements.
- 153. In most Member States, gaps have been identified in the understanding of OEs about the concept of BO and their obligations under the AML/CFT law on identifying and verifying BO of trusts and similar legal arrangements, which will have an impact on the adequacy of verification of BO information regarding legal arrangements, as well as the availability of this information to the competent authorities and other OEs in a timely manner. OEs in a few Member States have reported to be facing challenges in identifying and verifying foreign BO of trusts.

In one (1) Member State professional trustees declared to collect UBO information of trusts; however, some of them do not disclose this information to other reporting entities; for instance, when they engage – on behalf of the trust - in a business relationship with a bank. They indicated that UBO information is a confidential information, which they believe they cannot disclose.

- 154. There is lack of effective mechanisms in some Member States to ensure that trustees of trusts or individuals of equivalent position in other similar legal arrangements, which are required to provide BO information to the register, are adequately fulfilling their obligations. It is unclear how authorities in some Member States ensure that trusts which generate tax consequences are systematically registered, and that information is adequate, accurate and up to date.
- 155. Some of the major deficiencies (specific for trusts, in addition to the applicability in most cases of the other deficiencies related to verification and access to reliable information, noted under Article 30) identified in the Member States having an impact on the effective implementation of Article 31 include the following:

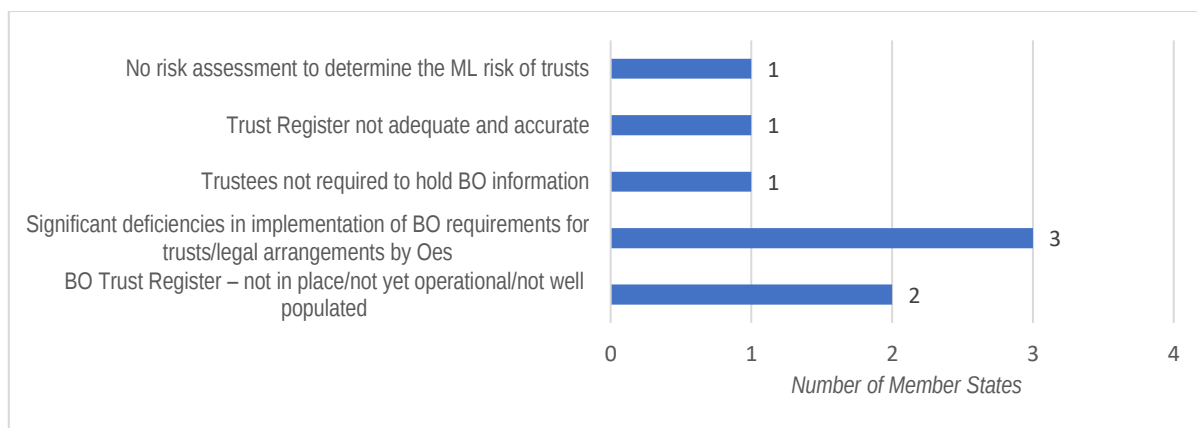


Figure 29. *Typologies of major deficiencies, Article 31 (Transparency of beneficial ownership)*

156. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 31 includes the following:

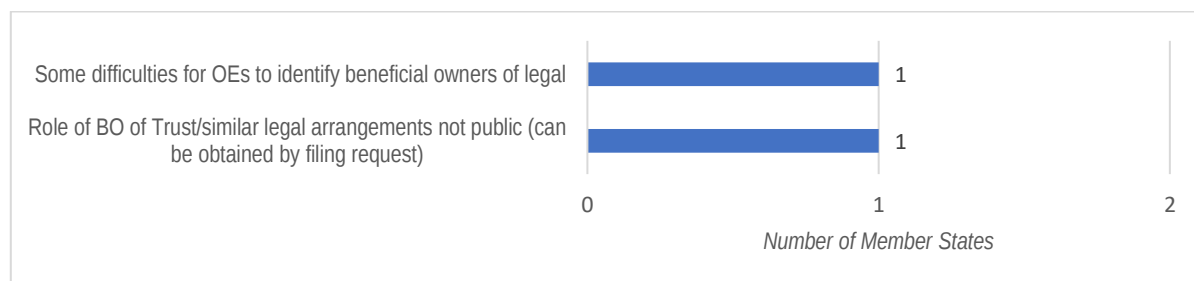


Figure 30. *Typologies of limited deficiencies, Article 31 (Transparency of beneficial ownership)*

Legal requirements and practices that impact implementation

157. There is no explicit legal requirement in one (1) Member State for foreign trusts to keep information on their beneficial owners.
158. Lack of sanctions in one (1) Member State on trusts or other types of legal arrangements for not holding and registering up-to-date, adequate and accurate information on their UBOs would impact the effective implementation of Article 31 requiring the availability of adequate, accurate and up to date information.

Good Practices

159. N/A

Compensatory Measures and Detrimental Factors

160. Transposition issues (gaps in the legislation and/or lacking secondary legislation) seem to remain in some Member States and appear to have a detrimental impact on the effective implementation of various provisions of Article 31 in these Member States ensuring the transparency of legal arrangements. For example, the absence of a legal requirement for a trustee to hold adequate and accurate information on the beneficial owners, settlors or beneficiaries of the trust/fiducie makes it difficult for competent authorities, the FIU and obliged entities to rely on information provided on legal arrangements.
161. The imposition of BO reporting requirements by Member States on all trusts and similar legal arrangements administered by trustees (or persons holding equivalent position) in the Member State, irrespective of whether such trusts generate tax consequences, would

eliminate situations where beneficial owners of trusts would not be reported due to the inadequate assessment of such tax consequences.

162. Lack of sectoral-specific risk assessment of trusts and similar legal arrangements, including assessing the extent to which country residents could be beneficiary of trusts with tax consequences in the Member State, could have a detrimental effect on ensuring effective mechanism for enhancing transparency of beneficial owners of trusts, especially when legal persons and arrangements have been identified as very high risk (inherent risk) and high risk (residual risk) in the Member State's NRA.

Conclusions (transparency of beneficial ownership of legal persons and legal arrangements)

163. In eighteen (18) Member States, major deficiencies have been identified on the effective implementation of Article 30; limited deficiencies were identified in six (6) Member States whereas both major and limited deficiencies were identified in three (3) Member States.

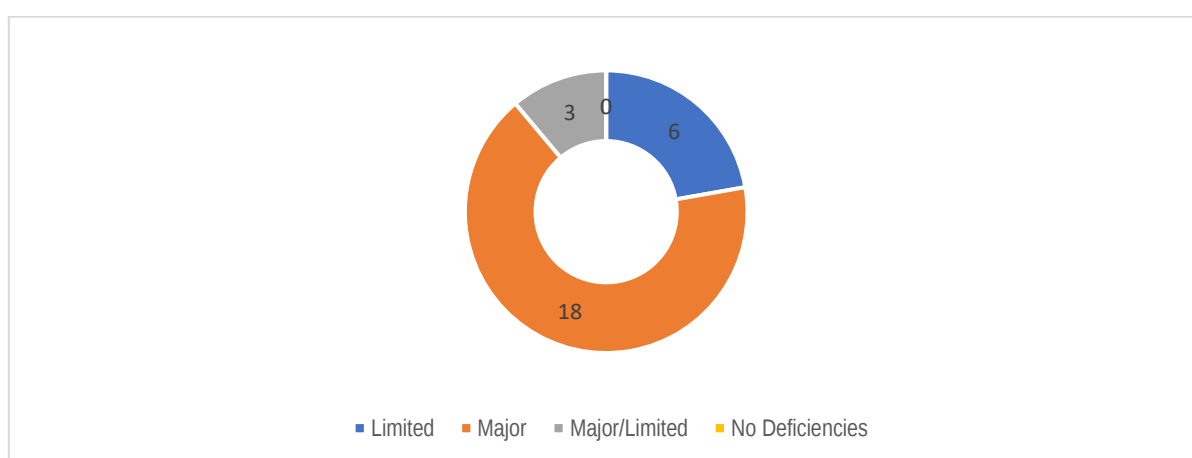


Figure 31. Status of implementation, Article 30 (Transparency of beneficial ownership)

164. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 30 in these Member States.

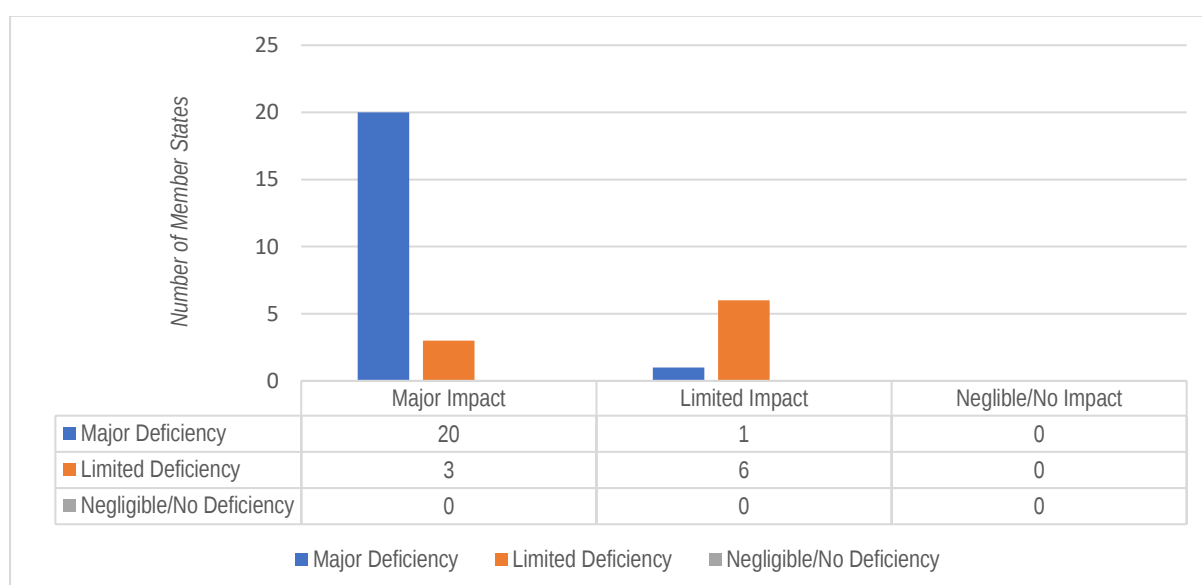


Figure 32. Deficiencies and impact, Article 30 (Transparency of beneficial ownership)

165. In five (5) Member States, major deficiencies have been identified on the effective implementation of Article 31; limited deficiencies were identified in two (2) Member States²⁰.

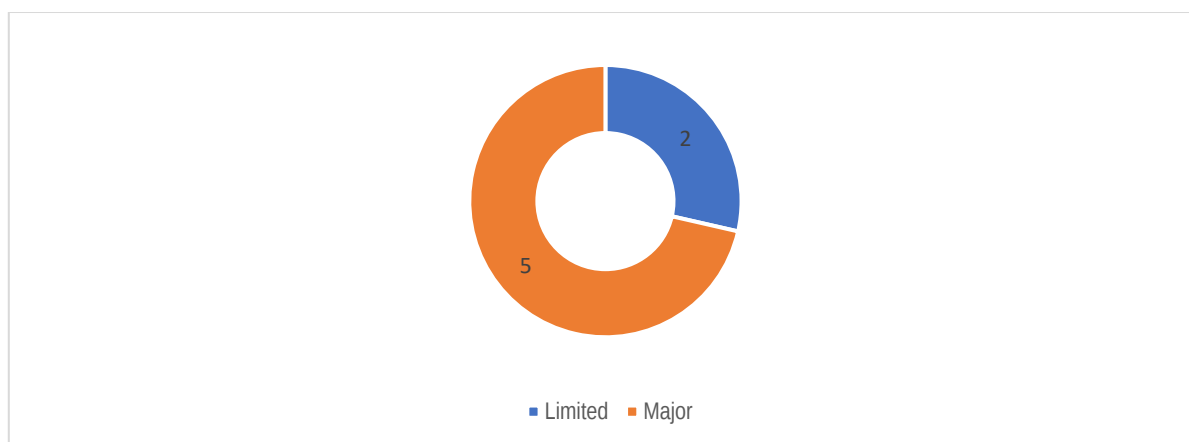


Figure 33. Status of implementation (Member States with specific shortcomings identified with regard to Article 31) (Transparency of beneficial ownership)

166. Most major deficiencies identified in Member States have been assessed as having a major impact on effectiveness whereas limited deficiencies have been assessed as having only limited impact on the effective implementation of the provisions of Article 31 in these Member States.

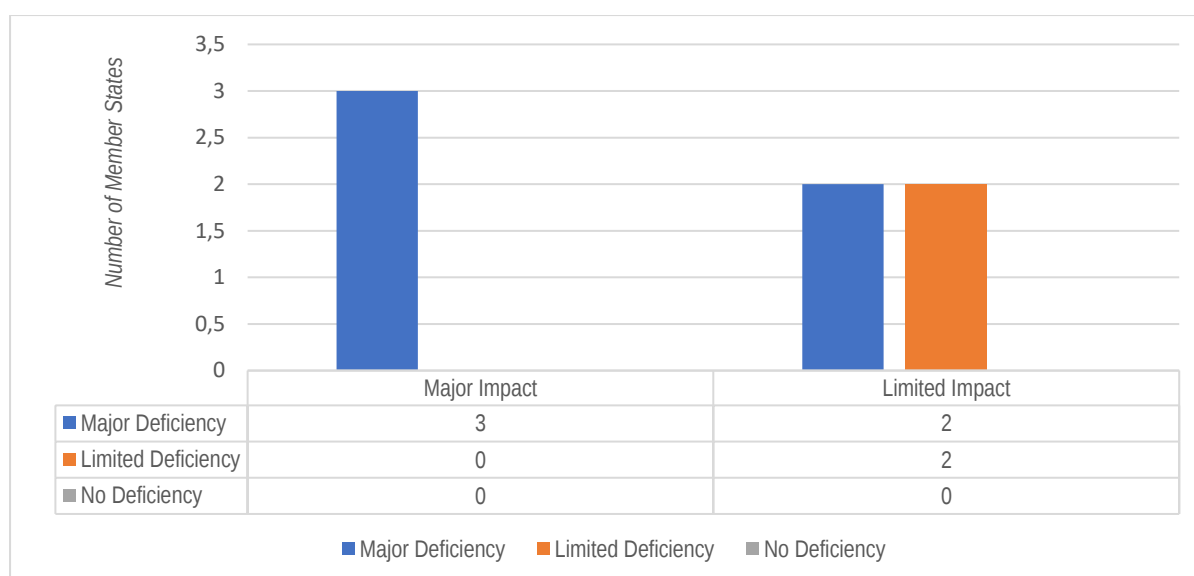


Figure 34. Deficiencies and impact (specific shortcomings for Article 31) (Transparency of beneficial ownership)

167. The Member States have put a lot of effort into ensuring the transparency of beneficial ownership of legal persons and legal arrangements. Nevertheless, a few Member States still

²⁰ This conclusion concerns only specific deficiencies related to legal arrangements while it is noted that in many cases the deficiencies identified under Article 30 will also apply for legal arrangements. The chart only includes the countries with explicit conclusions on Article 31 (i.e. a total of less than twenty-seven (27) Member States).

need to make sure that their BO registers are set up, fully functional, and completely populated, both for legal persons and legal arrangements. Mechanisms are required to be put into place, or they need to be improved, to ensure that the BO information listed on the register is adequate, accurate and up to date. In the majority of Member States, requirements imposed on legal entities and arrangements to obtain and maintain adequate, accurate, and up to date data on BO should be adequately enforced and require significant supervision. A few Member States also need to strengthen OEs' and competent authorities' access to the BO register. In the majority of Member States, OEs, including smaller banks, NBFIs, and particularly DNFBPs, encounter significant difficulties in identifying and verifying the identities of beneficial owners, especially in the case of complex ownership or control structures, when foreign legal persons are involved, or when the BO is based in a foreign jurisdiction or is a foreign national. Legal entities that are required to identify and disclose their beneficial owners on the register also face similar difficulties. This has an impact on the accuracy of the BO data gathered. To make sure that the relevant parties properly adhere to their BO obligations, sanctions for non-compliance with the BO requirements need to be reinforced in most Member States.

CHAPTER 5. Functioning of the FIU (Article 32)

168. Some of the factors underlying effective implementation of Article 32 include the following:

- a) The setup and functioning of the FIU as a central national unit for receipt of information on ML and associated predicate offences, and TF.
- b) Level of performance of FIU's core functions: receipt, analysis and dissemination, including use of all available sources of information, selection and in-depth analysis, types, recipients and frequency of disseminations allowing follow-up in line with national risks.
- c) The effective operational independence and autonomy of the FIU, including autonomy to analyse, request and/or disseminate information, FIU strategic plan and priorities, adequate financial, human and technical resources, and independent engagement with other domestic authorities and foreign counterparts.
- d) FIU's access to information, including the scope of access (financial, administrative and law enforcement information), the modalities of access and the timeliness.
- e) Competent authorities' feedback to the FIU, including any formal feedback mechanism in place, frequency and quality of the feedback, any changes in the FIU's analysis and dissemination processes based on the feedback.
- f) Effectiveness of the transaction suspension, including for transactions reported to the FIU by obliged entities, and transactions suspended on behalf of a foreign FIU, engagement with the OEs and follow-up.
- g) Level and impact of the strategic analysis performed by the FIU, including triggers for the analysis, procedures to guide the analysis, consistency of the strategic analysis with risks identified in the NRA, use of relevant information and dedicated automated tools, and statistics and case studies to show effectiveness of the analysis.

Systemic Issues and Deficiencies

169. In some Member States, the FIU cannot be considered the "central national unit" for receiving, analysing and disseminating all STRs relating to ML and associated predicate offences, and for TF. This affects the implementation of Art. 32 (3) of the 4th AMLD requiring a "central national unit", and also raises concerns about the level of analysis performed by the FIU.

In one (1) Member State analysis of TF STRs is done by counter-terrorism agency to which the FIU disseminates STRs after initial checks. In another Member State, there is a parallel reporting system of suspicious transactions related to tax crimes to an authority other than the FIU. One (1) Member State requires ML/TF STRs to be reported to the Police and the analysis of STRs by another authority, in addition to the FIU, a practice which will also have an impact on the confidentiality of the STR information.

170. FIUs are operationally independent and autonomous in most Member States. However, certain impediments/factors have been identified in some Member States which may influence the autonomy of the FIU at practical level and thus the effective implementation of the 4th AMLD. These factors include lack of dedicated budget for the FIU functions, reliance of the FIU on another institution, mostly on its host institution, to secure the necessary resources for carrying out its functions, especially the budget allocation and HRM functions, as well as IT support, and seeking approvals before disseminating the results of its analysis. In some Member States, the FIU staff could also be allocated to other activities of the host institution, which may have an impact on its capacity to carry out its functions efficiently and effectively.

In one (1) Member State while the FIU has its own budget, the Head of the FIU can only execute payments of up to EUR 5,000. For any exceeding amount, he or she needs an approval from a senior member of the management outside of the FIU.

171. Considering the workload, FIUs in most Member States are facing challenges in securing adequate financial, technical and human resources to adequately perform their functions. This impacts FIUs' ability to effectively carry out operational and strategic analysis, both with regard to their timeliness and quality. The impact of inadequate human resources appears to be more significant in some Member States where the analytical flow of the FIU is predominantly paper-based, or the FIU has been given supervisory tasks in addition to its core functions.
172. Systematic deficiencies on FIU's access to certain types of information have been identified in a number of Member States. In these Member States, FIUs have limited, predominantly indirect access to information from some of the other competent authorities (need to file requests to competent authorities to obtain and access the required information) or specific modalities of access which affect the timeliness of analysis and ability to prioritise cases. Some of those practices are very resource-consuming especially when large number of requests are to be filed to obtain the necessary information and additionally impacts the effectiveness of the analytical processes, especially in situations where wide searches are conducted, or competent authorities fail to provide responses within the dedicated timeframe. In two (2) Member States, the FIU has no clear legal basis to request (and obtain) information from other competent authorities when such information is not directly accessible to the FIU. In the absence of an enabling provision, and considering the strict privacy laws, this may impact FIU's access to other types of information and impacts its ability to carry out its analysis function properly as in practice such information is not requested.
173. Most Member States do not have sufficient mechanisms in place to ensure that the competent authorities provide regular, adequate and systematic feedback to the FIU on the use of the information disseminated by the FIU and on the outcome of any investigations or inspections performed on the basis of that information. In many Member States, the FIU can request feedback from the competent authorities on a case-by-case basis but this mechanism lacks sustainability and largely depends upon the discretion of the competent authority. There is in most cases lack of comprehensive statistics on the feedback received from the competent authorities and the feedback is mostly said to be provided on an informal basis, which raises concern on the effective implementation of this provision in most Member States. This also impacts the ability of the FIU to provide adequate information to OEs on the use of STRs and ensure that adequate and quality financial intelligence is available to target the major national ML/FT risks.

In one (1) Member State for example feedback is provided by LEAs on the disseminated reports annually at the beginning of a year over the cases in the previous year.

174. FIUs in the majority of Member States have made a limited use of their power to suspend or withhold a transaction in case of a suspicion of ML/TF in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. The focus is mainly on ex-post examination of transactions after the flight of the potential proceeds of crime. Such an approach is either due to a lack of clarity on the FIU powers to delay a transaction, specific legislation which requires reliance of the FIU on the decision of another authority to suspend transactions, high evidential threshold in practice (defeating the purpose of this preventive mechanism to check the transaction and corroborate the suspicion), or because most transactions are reported by OEs after they took place, which implies gaps in their effective implementation of the requirement to refrain from carrying out a transaction and file an STR to the FIU. These deficiencies impact also the ability of those FIUs to postpone transactions at the request of a foreign FIU. Even

the transactions that were initially suspended by the FIU in a few Member States were not ultimately followed by attachment orders. There are no or limited statistics available in some Member States on suspended transactions, the details of the transactions and/or the follow-up to those suspensions, and particularly on the suspensions at the request of an FIU from another Member State or any requests for suspensions addressed to foreign FIUs. In one (1) Member State, the FIU is not even empowered by law to suspend a transaction, other than at the request of a foreign FIU.

175. In a number of Member States, the dissemination of the results of the FIUs' analysis (both operational and strategic) and any other additional relevant information by the FIU to the competent authorities is impacted by limited resources and is not commensurate with major national ML/FT risks. The low conversion rate of the financial intelligence to disseminations to the competent authorities and/or the divergence of the disseminations from the major national risks could be indicative of insufficient quality of STRs, inadequacies in the process and outcomes of the FIU analysis, need for further resources and increased feedback by recipients, privileging certain cases in line with law enforcement priorities (which are not necessarily in line with national risks as identified by the NRAs). Disseminations made by FIUs in most Member States are almost exclusively triggered by the STRs received. There have also been some concerns about limited financial analysis included in the financial intelligence packages disseminated to LEAs, making these disseminations less meaningful in initiating a case or in any investigations and prosecutions²¹. When comparing the total number of disseminations by the FIUs to the number of criminal proceedings opened in different Member States, there is either a low conversion or significant decrease in the number of criminal proceedings opened in some Member States on the basis of information disseminated by the FIU, which raises concern over both the quality of information analysed and disseminated by the FIU and the availability of appropriate processes and practices within the competent authorities for acting on FIU disseminations. FIU in one (1) Member State do not sufficiently prioritise ML dissemination on complex cases with high ML potential, but the focus is on the provision of financial intelligence to an existing or ongoing investigations. TF disseminations are almost non-existent in some countries and rarely any TF cases seem to be opened on the basis of the STRs or on the basis of other sources available to the FIU.
176. On the operational and strategic analysis function of the FIU, it has been found that:
 - a) FIUs' operational and strategic analysis function in most Member States is impacted by the limited human and technical resources. Limited resources impact the strategic work of the FIU in terms of the development of guidance, processes and strategies, and causes limitations related to the scope and quality of the information provided to the OEs and supervisory authorities as part of the strategic analysis.
 - b) The main source of information to trigger an in-depth FIU analysis is the STRs in most Member States. Operational analysis cases are rarely opened on the basis of other types of information. FIUs in most Member States are not fully exploiting the wide range of information sources they have access to in their operational analysis.
 - c) FIU's analytical capability in a number of Member States significantly suffers from the lack of relevant and accurate information from reporting OEs, in terms of both quantity and quality. There is a perceived lack of recognition of risks and underdeveloped systems of reporting suspicion in OEs of many Member States,

²¹ It is noted however that the assessment of the use of financial intelligence by law enforcement authorities falls outside the scope of the 4th AMLD process and methodology. Hence, this conclusion is based on anecdotal information received during some assessments and not on systematic review of all relevant factors regarding the use of the information by law enforcement and the capacity and practices of following-up on the disseminated financial intelligence.

which may significantly reduce the availability of relevant information to the FIU commensurate with the major risks and impact its analysis process.

- d) The automated or semi-automated processes in some Member States that allows the selection of STRs for in-depth analysis are primarily focused on screening the content of new incoming reports (in some isolated cases even without adequate consideration of connections with previous STRs or more often - without taking into account relevant sources of information which are not susceptible to the automation processes). Such practices raise concern whether those FIUs are adequately and proactively pursuing cases to maximise its operational analysis and adequately inform its strategic analysis in line with the risks.
- e) In some Member States, there is lack of comprehensive system for prioritisation and selection of STRs for opening cases, which is mainly done on an ad-hoc basis and based on expertise of the FIU staff. In the absence of any clear procedure or guidelines, the decision about the STRs which will be selected for in-depth analysis largely depends upon the discretion of the analyst. The lack of sufficient standardisation process for STRs prioritisation to ensure the mandatory consideration of all relevant descriptors of relative significance may adversely affect the selection of cases to be analysed and thus the overall effectiveness of the analysis function of the FIU.

In one (1) Member State if several subjects are mentioned in an STR, only the main subject will usually be included in FIUs database (decision on an ad-hoc basis and usually limited by available resources). This might lead to delays in answering domestic and international requests as well as missed opportunities for detecting links between subjects and transactions.

- f) The results of the FIU analysis disseminated to other competent authorities in some Member States are mainly based on separate STRs and have not been sufficiently enriched with information from external registers or other sources of data the FIU has access to, which in some of these Member States is also limited.
- g) In some Member States, the analysis function of the FIU is mostly based on database checks rather than adding through a process that entails also requests of additional information to competent authorities where the information is not directly available.
- h) The STR prioritisation and analytical processes of FIUs in most Member States are not driven by, or do not necessarily correspond with, the findings of the NRA.
- i) The FIU's strategic analysis function is still insufficiently developed in a number of Member States. In most Member States the strategic analysis conducted by FIUs is of limited use and does not sufficiently support the need of competent authorities, especially supervisors, and OEs. More targeted typologies that show, for example, how specific categories of FIs and DNFBPs, and the products or services they offer, have been/can be misused for ML and/or TF purposes, are only occasionally issued by the FIUs, and there is usually a lack of specific strategic analysis of country's high-risk areas by the FIUs. These types of typologies would, however, undoubtedly improve the scope and level of reporting to the FIU.
- j) There is lack of written procedure or methodology to conduct strategic analysis in most Member States and also the mechanism to systematically distribute the results to various authorities or reporting entities to further inform their work. OEs, especially DNFBPs, are generally not aware of the FIU's strategic analysis work in most Member States and do not know where to find such information.
- k) Limited number of strategic analysis products or outputs are produced in most Member States and limited dissemination of these products, which are predominantly addressed or confined to competent authorities.

Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 32 are summarised below:

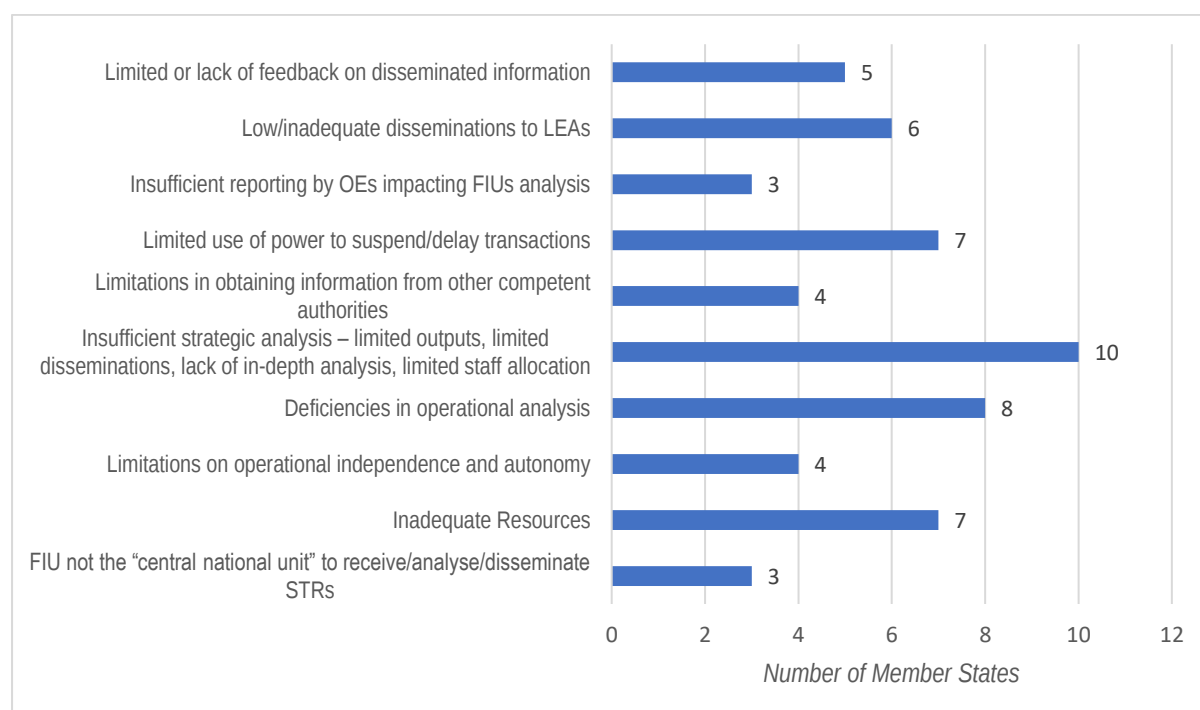


Figure 35. *Typologies of major deficiencies, Article 32 (Functioning of the FIU)*

177. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 32 include the following:

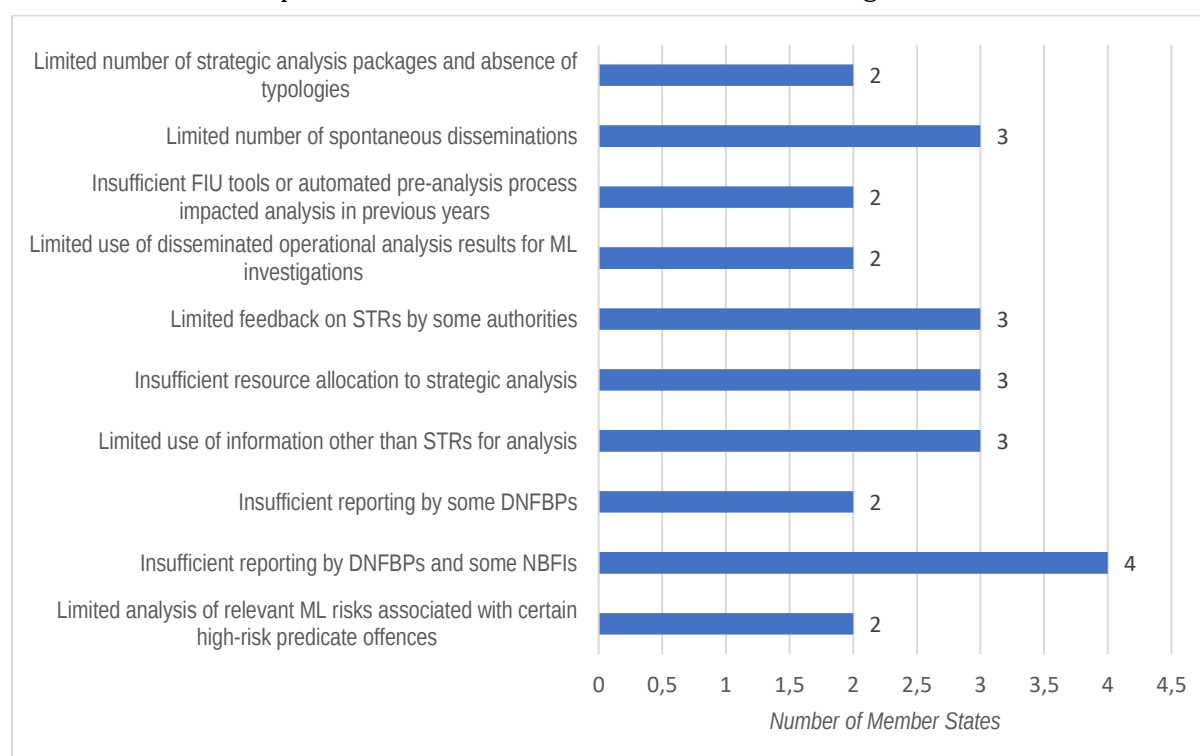


Figure 36. *Typologies of limited deficiencies, Article 32 (Functioning of the FIU)*

Legal requirements and practices that impact implementation

178. Some of the legal requirements and practices that might impact the effective implementation of Article 32 in some of the Member States include the following:

- a) Lack of specific legal provisions establishing the operational independence and autonomy of the FIU, including lack of specific rules for the appointment and dismissal of the Head of the FIU, may impact the effective implementation of Article 33 in some Member States.
- b) Legal provisions in some Member States requiring the submission and/or analysis of STRs relating to ML and associated predicate offences and/or TF, by another Member State agency (outside the FIU) impacts the effective implementation of Article 32 (3) of the Directive requiring a “central national unit”, and also raise concerns about the level of analysis performed by the FIU.
- c) Despite the independence and autonomy of the FIU being formally established in national legislation of Member States, particular impediments may influence the autonomy of the FIU in practice in some Member States on two separate levels – a) on the ability to secure the necessary resources for carrying out the functions of the FIU and b) the possibility to effectively disseminate the results of its analysis. This may impact the effective implementation of Article 32 of 4th AMLD.
- d) The legal provisions in at least two (2) Member States requiring that operational analysis be triggered only on the basis of information and notifications received by the FIU (STRs, other information, requests by competent authorities, etc.) creates certain limitations in reacting in some isolated cases to potential ML/FT suspicion (i.e., from open source information).
- e) Legal provisions that give long time to OEs to respond to an FIU request are inconsistent with the notion of “timeliness” required pursuant to Article 33(1) (b) of the Directive and may impact the effective implementation of the AML/CFT systems.
- f) In some Member States, the legal requirement and practice of reporting and requesting information from certain professionals by the FIU *via* the SRBs and a sanitised way of reporting SARs by the SRBs may have a significant impact on the access to information from such sectors and on the analytical function of the FIU.
- g) In some Member States where the national law does not allow for the direct access to law enforcement information the operational analysis tasks of the FIU are significantly impacted, for responses from LEAs are only occasional and inadequate in contents. The time required for obtaining law enforcement information and the limitations in the scope of this information (e.g., limited information on current investigations provided at the discretion of the LEAs or inferred from the requests to the FIU from law enforcement and judiciary) impact the effectiveness of analysis.
- h) In one (1) Member State, except for certain supervisory authorities, there is no legislative requirement to compel the remaining authorities to provide feedback to FIU.
- i) To ensure the timely and effective dissemination of the findings of the FIU analysis to LEAs, one (1) Member State has established a mechanism by which, following initial checks to corroborate suspicion, STR information is uploaded into a data warehouse of law enforcement, which is directly accessible by law enforcement and can be used on an “as needed” basis. To improve the quantity and quality of the disseminated suspicious transactions, it is aimed to add extra contextual information (attachments, type of criminality, etc.) to this database soon. Although such an approach will help law enforcement in better understanding the financial intelligence that is produced by FIU, the sharing of (all) STRs with the law enforcement in bulk may have negative effects on usefulness of such information in practice, not the least of which is the

disincentive to follow up the most complex cases or the bias towards the LEA needs/urgencies/existing cases rather than the major national risks.

Good practices

179. Some of the good practices that have been observed by the review team in a few Member States to ensure the effective implementation of Article 32 include:
- a) Establishment of public-private partnership (PPP) with the most important OEs to strengthen the FIU's outreach to the private sector with regard to sharing emerging ML/TF trends and methods.
 - b) One (1) Member State has recently put in place a formal feedback mechanism to ensure that LEAs provide regular and appropriate feedback to the FIU on the use of its disseminated information. Statistics regarding this feedback mechanism are kept and showing a steady increase in the number of formal feedbacks received by the FIU. On average, feedback was received in 87.6% of the cases.

Compensatory Measures and Detrimental Factors

180. Some of the compensatory measures identified in the Member States to ensure the effective implementation of Article 32 include the following:
- a) In one (1) Member State, the increased use of technology mitigates the risk of overburdened personnel at FIU level.
 - b) Issues of conformity of transposition in some Member State regarding the timely access of the FIU to information are compensated by the fact that the FIU has online and direct access to a broad range of databases containing information needed to perform its functions.
 - c) Issues of conformity in Member States concerning the analysis function of the FIU are compensated by the fact that the FIU conducts the relevant analysis of the information it receives in practice, including the strategic analysis, in line with FATF and Egmont Group requirements²². Notwithstanding the fact that the domestic requirement may not be verbatim identical to the Directive's requirement, the FIU is responsible of and also performs strategic analysis, although there is ample room for its improvement.
 - d) Issues of conformity in two (2) Member State related to the lack of the power of the FIU to take urgent action where there is a suspicion that a transaction is related to ML or TF, to suspend or withhold consent to a transaction that is proceeding, seem to be compensated in practice by the FIU's powers.
 - e) The conformity issues identified in one (1) Member State concerning Article 32(5) have no impact on the practical implementation of the provisions of the 4th AMLD, taking into account, that none of the above exemptions have been used in practice by the FIU to refuse answering to a request from competent authorities. The grounds for refusal entrenched under the national law seems relevant to the disclosure of information with foreign counterparts rather than domestic competent authorities. In addition, the national law indicates that the FIU will not be obliged to disclose any information or documents if, due to exceptional circumstances, such a disclosure would be clearly disproportionate to the legitimate interests of the country or of a natural or legal person.

²² It is noted that Egmont Group (EG) has its own Support and Compliance Process to identify members (FIUs) that are not compliant with EG's Charter and Principles of Information Exchange and take follow-up action.

- f) In one (1) Member State, the lack of power of the FIU to suspend a transaction (other than as a result of the request of a foreign FIU) is compensated by the fact that in these cases OEs refrain from carrying out transactions that could be related to ML/TF. In practice, the OEs inform FIU so that it can carry out an analysis without delay, when relevant, and disseminate the information to the police through the attached unit. The funds can then be frozen with a court order. However, despite the compensatory measures implemented by the authorities, this may prevent from blocking suspicious funds in some cases.
181. Some of the detrimental factors identified in the Member States that impacts the effective implementation of Article 32 in practice include the following:
- a) In some Member States, as regards the receiving and analysis of STRs related to predicate offences and/or TF, the FIU is not the only authority responsible for that, which is detrimental to the FIU in efficiently and effectively performing its analytical function.
 - b) There is no legal requirement for LEAs in one (1) Member State to provide feedback to the FIU about the outcome of the investigations performed on the basis of STR information.
 - c) The fact that an FIU responds to a significant volume of requests for information from other authorities affects the implementation of the Directive's requirement that, in these cases, the decision "shall remain with the FIU", and may be detrimental to the effective implementation of core functions of the FIU, given the workload that such requests are likely to generate.
 - d) The detrimental effect of not explicitly transposing Article 32(8) of the 4AMLD on operational and strategic analysis by one (1) Member State that the strategic analysis of the FIU in this Member State is (consequently) limited to the NRA and the annual reports.

Conclusions (functioning of the FIU)

182. In nine (9) Member States, major deficiencies have been identified on the effective implementation of Article 32; limited deficiencies were identified in six (6) Member States whereas both major and limited deficiencies were identified in eleven (11) Member States. There were no deficiencies identified in only one (1) Member State.

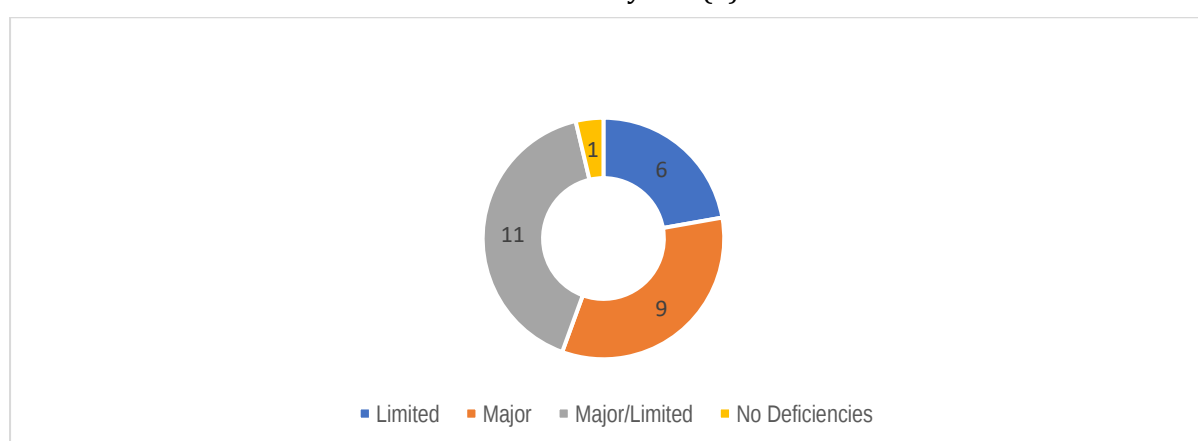


Figure 37. *Status of Implementation, Article 32 (Functioning of the FIU)*

183. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 32 in these Member States.

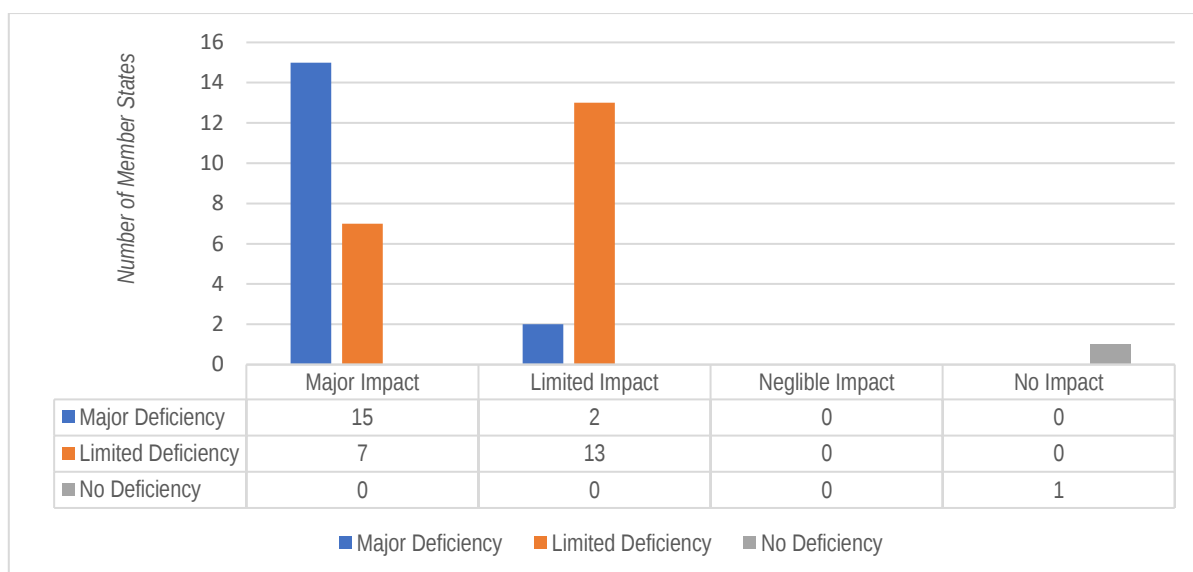


Figure 38. Deficiencies and Impact, Article 32 (Functioning of the FIU)

184. In order for FIUs to carry out their duties successfully and efficiently, Member States should make sure that enough resources—financial, human, and technical—are made available. This has been noted as a serious weakness in a number of EU Member States. Any factors/circumstances that have been identified in some Member States as having the potential to affect the operational independence and autonomy of the FIU should be properly addressed. Most Member States need to improve FIU’s timely and sufficient access to information from other competent authorities. In the majority of EU Member States, mechanisms should also be put in place to ensure that the FIU receives regular, adequate, and systematic feedback from the competent authorities regarding the use of the information it disseminates and the results of any investigations or inspections conducted using that information. Additionally, there is room for improvement in the majority of Member States regarding the FIUs’ use of their authority to suspend or withhold a transaction in the event of any suspicion of ML/TF, as well as regarding the FIUs’ dissemination to the relevant authorities of the findings of their analysis (both operational and strategic). The majority of Member States also need to do more to strengthen the role of their FIUs in operational and strategic analysis.

CHAPTER 6. Suspicious transaction reporting (Articles 33-36 and 46.2)

185. Some of the factors underlying effective implementation of Articles 33-35, which were considered in the assessment process in line with the methodology, include the following:
- a) In case of spontaneous reporting, including attempted transactions, consideration is given to the relevance of the triggers, the timeliness or reporting, consistency with identified national and entity risks, the quality of reporting, including supporting documents and the effectiveness of supplying relevant additional information (on request or spontaneously).
 - b) Fully and efficiently responding to requests for information from the FIU, including whether the FIU can request information if no prior report is filed.
 - c) The effective implementation of the option of reporting through self-regulatory body (SRB) for auditors, external accountants and tax advisors, notaries and other independent legal professionals, real estate agents.
 - d) Suspension of suspicious transactions by OEs on their own initiative and reporting them to the FIU.
186. Some of the factors underlying effective implementation of Article 36, which were considered, include the following:
- a) STRs made available to the FIU either as a result of inspections of OEs by competent authorities or otherwise.
187. Some of the factors underlying effective implementation of Article 46.2 include the following:
- a) The nature, scope and quality of the general (seminars, guidance, red flags and typologies) vs. specific feedback to OEs by the FIU, the supervisor and/or the SRB consistent with identified national and entity risks.

Systemic Issues and Deficiencies

Articles 33-35

188. Reporting levels greatly vary between categories of OEs as well as particular OEs within the same sector in most Member States. The majority of STRs in almost all Member States are submitted by credit institutions, particularly larger banks. Even within the banking sector, a trend has been noticed within a number of Member States where the majority of suspicious transaction reporting is in fact limited to a few banks, and there is also an inclination towards defensive reporting – the factor which significantly impacts the quality of submitted STRs.
189. In some Member States, a few NBFIs (such as MVTs) are also actively submitting STRs. However, overall, the suspicious transaction reporting by most NBFIs (such as PSPs, money remitters, currency exchange bureaus) and particularly by DNFBPs (except one or two categories which vary from one Member State to another) is extremely low and inadequate in most Member States. The reporting by some of these NBFIs and DNFBPs is inconsistent with the risks identified in connection with several of these OEs categories in the NRA of most of these Member States and the materiality of the respective sectors. Generally, most of the interviews conducted during the assessment process demonstrated that there is a lack of proper understanding among OEs, predominantly among DNFBPs, of what entails a suspicious transaction. Furthermore, not all DNFBPs seemed to have adequate controls implemented to detect possible suspicious transactions. The inadequate reporting by OEs impacts the overall effectiveness of the AML/CFT system in view of the materiality of the sectors and the particularly higher risk associated with some of those sectors in a number

of countries. This shortcoming also impacts and the functioning of the FIU in a Member State, for it narrow the scope of information available and analysed by the FIU.

190. Compared to ML STRs, the number of STRs related to TF is extremely low in almost all Member States. For some of the countries this has been identified as inconsistent with the country's TF risk profile. Low level of proactively identified STRs potentially related to TF may also be an indicator that OEs face challenges with the implementation of the requirements for identifying and reporting of suspicions of TF and would benefit from additional guidance on the topic.

In two (2) Member States TF-related suspicions are exclusively triggered by the links of the customers to higher-risk jurisdictions rather than by any possible suspicious activity the customers might be involved in.

191. The quality of the reporting varies among specific sectors of OEs in almost all Member States. Despite encouraging improvements in the STRs quality in a few Member States, especially with the credit institutions, the quality of reporting by other OEs in most Member States has been identified as significantly worse. In most Member States, the quality of reporting is not commensurate to the prevalent proceeds-generating crimes and does not feed well-grounded ML/TF suspicions into the FIU's analytical process. A lot of work thus still needs to be done with NBFIs and DNFBPs both in technical (e.g., submission of comprehensive and complete data) and substantial (e.g., better substantiated suspicions, alignment with prevalent threats in the country) aspects. Low number of STRs that are further disseminated to LEAs in most Member States also raises concern about the quality of STRs submitted by OEs.

In one (1) Member States the reporting requirement in practice is narrowed down to identification of transactions that meet the reporting "threshold" of higher risk situations, as confirmed by the absolute majority of FIs and practically all DNFBPs met during the assessment process.

192. In almost all Member States, the statistics on the reporting of attempted transactions are either not maintained, unavailable or they are insufficient. There is also an issue of reliability of data on attempted transactions; for instance, in one (1) Member State the number of attempted transactions were the same as STRs on completed transactions. In some Member States where data on attempted transaction is available, there is very low level of such reporting, which is again mainly confined to credit institutions, and attempted transactions appears to be largely ignored by OEs in most Member States. Such a practice impacts on the ability of the AML/CFT system to react in a preventive manner to ensure that the authorities could intervene by suspending a transaction, which remains marginal.

In one (1) Member State the majority of OEs, notably DNFBPs, do not file or file very few STRs on attempted transactions. Most of them do not enter into or terminate the business relationship when they cannot implement CDD measures or when they have a suspicion, but do not indicate sending the information to FIU as a rule.

In another Member State, there is a demonstrated lack of understanding of the concept of attempted transactions in some cases and the declared lack of focus (in another case) on the use of monitoring by risk scenarios and alerts other than those necessary for the application of targeted financial sanctions.

193. A systematic issue of de-risking has been identified in some Member States, especially among the DNFBPs sector, where strong de-risking takes place during the KYC/CDD process.
194. In most Member States, the requirement for OEs, including banks, NBFI and DNFBPs, to delay or suspend a transaction on their own initiative until they inform the FIU and receive

further instructions has rarely been implemented effectively. FIUs in most Member States are unable to efficiently assess how many STRs were reported prior to the execution of a transaction or operation. There are differences in opinion of OEs of the conditions under which transactions should be postponed and reported for the FIU to consider further suspension. Considering the low level of reporting in most Member States (especially with NBFIs and DNFBPs), there are doubts as to the extent OEs can adequately identify and/or suspend suspicious transactions, which further limits the possibility of the FIU to intervene in a timely manner using its powers to suspend transactions and effectively secure potential proceeds of crime/TF. In some Member State, OEs in fact raised concerns about the lack of timely feedback from the FIU on suspended/delayed transaction, which had led them to unilaterally decide what to do with the transaction and the business relationship more broadly.

195. In some Member States, professionals, especially lawyers and notaries, have been given the option, or are required, by law to file STRs *via* their SRBs, which would in turn submit the relevant STRs to the FIU. In some of these Member States, contrary to 4th AMLD provisions, the SRB has been given a discretion whether or not to pass the information to the FIU or whether to pass it in filtered or unfiltered form. Such a requirement or practice in most of these Member States, including the need of the SRB to conduct an assessment of STRs, has been identified as having a negative impact on the effectiveness of STR reporting, for it not only limits the possibility to forward the STR promptly to the FIU, but it is also detrimental to any potential cases requiring immediate reaction of the FIU. Such practices usually have repercussions also on the ability of the FIU to request and obtain in a timely manner additional information from the respective categories of OEs.

In at least one (1) Member State there were instances identified where STRs were filed by FIs regarding suspicious transactions involving legal professionals that have not resulted in parallel filings through the SRB. This raises the question on whether such practices are a result of wilful blindness or lack of understanding of obligations among representatives of the sector, as well as on the adequacy of the setup and any confidentiality concerns that the lawyers may have which would result in failure to file with the Bar Association. Relatedly, this would also impact any supervision efforts as the SRB would not be able to make use of such STR information for risk profiling and corrective action.

In at least two (2) Member States, for instance, SRBs remove the identification of the reporting lawyer or notary upon receipt of the SAR and before forwarding it to the FIU. Any request to the FIU has also to be forwarded via the SRB, which may lead to a loss of time and a lack of information available.

In one (1) Member State, there is no legal requirement for these SRBs to forward “promptly and unfiltered” the information to FIU. Figures communicated by the authorities showed that they file STRs within an average delay of 100 days.

196. In some Member States, there is a lack of guidance from the competent authorities, including SRBs, on exercising professional privilege, which has led to confusion and divergent opinions on the matter among OEs, as well as between the supervisors and OEs. This impacts the effectiveness of the STR reporting from some of these professions.

In one (1) Member State, for instance, the SRB takes the position that information should be provided in case of suspicion, while legal professionals seem to believe that there is some leeway on what can be provided under certain circumstances.

In another Member State, for instance, there are some differences of opinion as to whether the AML/CFT law would indeed prevail over legal privilege in the case of a request of the FIU related to reported transaction that was not filed by a lawyer. They

stated that in these cases they would seek the opinion of the dean, which could amount to potential tipping off.

Article 36

197. In the majority of EU Member States, there is either limited or no reporting by competent authorities and supervisors to the FIU of any facts or suspicions relating to ML or TF that they might have discovered during their inspections, even though some cases have been reported where an inspection led to the identification of an activity that should have been reported to the FIU and in some cases OEs are instructed as a result of such findings to file the reports themselves.
198. The limited detected violations in filing STRs by supervisors, especially in light of relatively low level of reporting by OEs of particular sectors which are identified as high-risk in the NRA, does not seem to be consistent with the identified risks with majority of FIs and DNFBPs in the Member States. Such a practice raises two questions: a) whether the number of inspections carried out by supervisors are sufficient and they are following adequately a risk-based supervisory approach; and b) the supervisors' capacity to effectively detect such unreported transactions or operations. Lack of clarity on certain aspects that might raise suspicion for supervisors (cash transactions, transaction monitoring) and consequently, its non-reporting to the FIU impacts the effective implementation of Article 36 of the 4th AMLD.

Article 46.2

199. In almost all Member States, OEs, especially smaller FIs and DNFBPs, require more guidance, training and outreach activities on the recent and emerging trends and typologies of ML and TF, including indications leading to the recognition of suspicious transactions. Due to limited or no guidance from the competent authorities, some OEs, as highlighted above, have limited understanding of their reporting obligations and modalities to report, submitting poor quality STRs, including a complete absence of STRs from certain types of OEs. While in at least several Member States, there is lack of dissemination of NRA granular findings to the OEs, resulting into their limited understanding of ML/TF risks facing the country and particularly facing their sector, in another Member State, the guidelines/indicators developed to support the OEs in fulfilling their reporting obligations have not been updated since the early 2010s. There is a need for more frequent and targeted engagement of OEs with FIU to support or further enhance the effective implementation of their reporting requirements.

In one (1) Member State, the FIU only produces annual report with some details on STRs received and disseminated, as well as a couple of case examples showing how STRs were transformed into financial intelligence that met the operational needs of investigators. The FIU does not provide any comprehensive overview of relevant typologies, trends and indicators and has not yet produced any profession-specific typologies showing how professionals and their services can be misused for ML/TF purposes.

200. In most Member States, a systematic deficiency has been identified as to the provision of adequate feedback to the OEs by FIUs on their submitted STRs, which also impacts the quality of STRs. Limited, and very generic, feedback is provided by the FIU to the OEs in most Member States, which range from simply acknowledging the STR to providing information when any STR is further disseminated to LEAs. There is no established mechanism in most Member States to provide regular, timely and substantial STR-specific feedback to OEs on the quality of the submitted STR or the outcome of the analysed STR. This low level of feedback is not sufficient in view also of the overall level of reporting deficiencies identified in a number of Member States.

In one (1) Member State, the feedback is provided annually to OEs and is mainly statistical on the total number of STRs and CTRs received in the previous year and data on FIU actions on STRs and CTRs. Annual feedback created some challenges for OEs as the customer that is the subject of a STR is placed under enhanced scrutiny by the OE and more expeditious feedback would help with the risk assessment of customers.

201. The typologies of deficiencies under Articles 33 – 35 are summarised below:

- a) Some of the major deficiencies identified in the Member States on the effective implementation of Articles 33-35 includes the following:²³

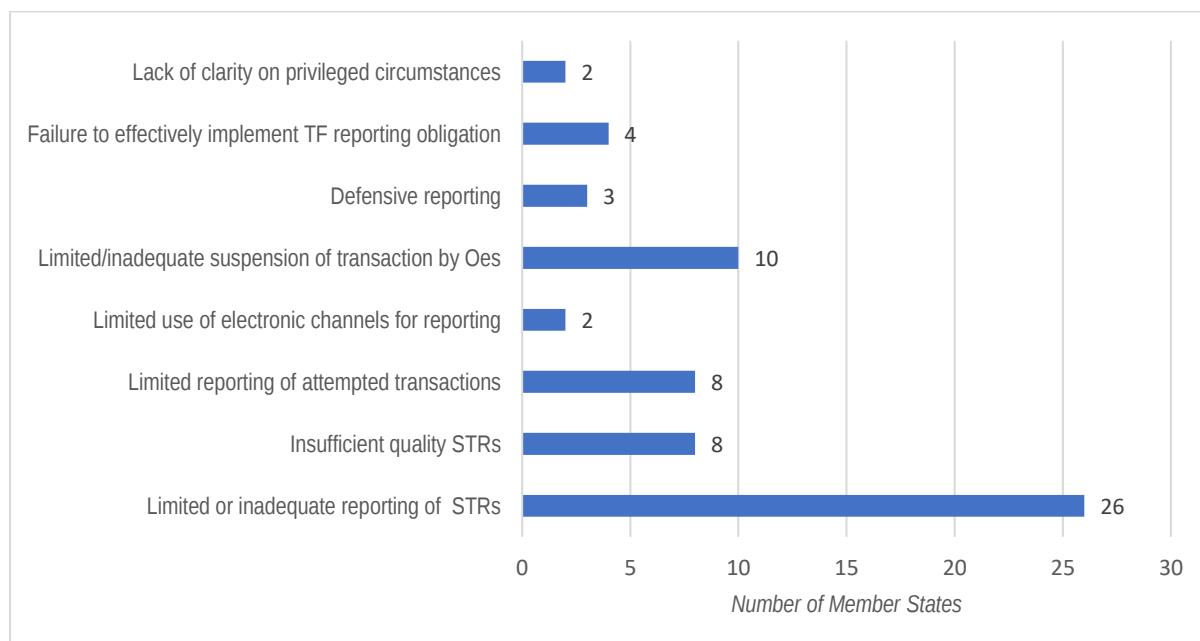


Figure 39. *Typologies of major deficiencies, Articles 33-35 (Suspicious transaction reporting)*

202. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Articles 33-35 include the following:

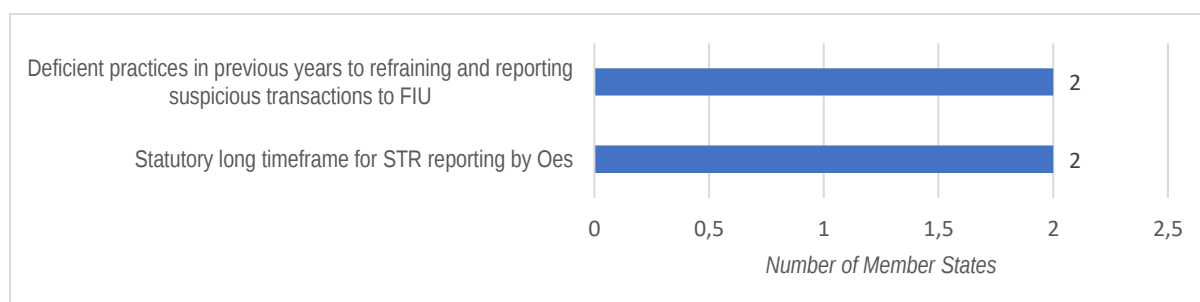


Figure 40. *Typologies of limited deficiencies, Articles 33-35 (Suspicious transaction reporting)*

203. The typologies of deficiencies under Article 46.2 are summarised below:

- a) Some of the major deficiencies identified in the Member States on the effective implementation of Article 46.2 includes the following:

²³ Limited or inadequate reporting of STRs has been particularly identified as a deficiency for certain categories of OEs, particularly majority of DNFBPs and some NBFIs.

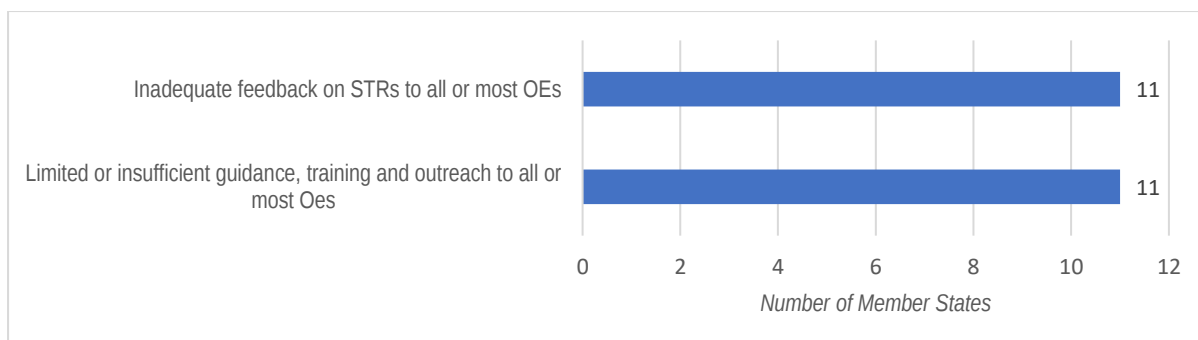


Figure 41. *Typologies of major deficiencies, Article 46.2 (Suspicious transaction reporting)*

204. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 46.2 includes the following:

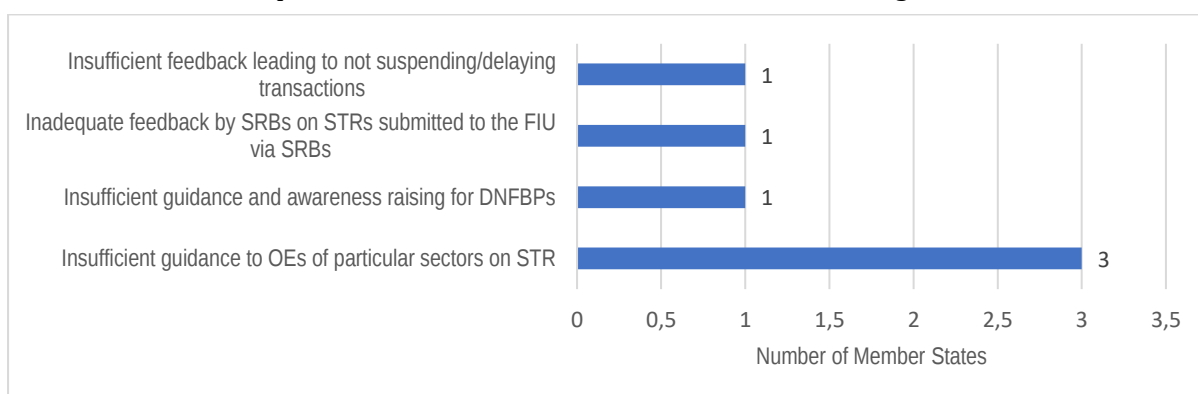


Figure 42. *Typologies of limited deficiencies, Article 46.2 (Suspicious transaction reporting)*

Legal requirements and practices that impact implementation

205. A practice has been identified in one (1) Member State where OEs within one of the DNFBPs sector in practice report suspicious activities either directly to the FIU or inform a private institution with delegated supervisory powers which will then send reports to the FIU or report suspicious activities. Such a practice is not in line with the 4th AMLD and could result in a loss of information that could be filtered and is a major deficiency as confidentiality of the STR is breached.
206. A legal provision in one (1) of the Member States where reporting entities have been given between 8 and 30 days to respond to a request from the FIU is determined to be inconsistent with the notion of ‘timeliness’ in Article 33.1(b) of the Directive and may impact the effective implementation of this provision.
207. The legal requirement and practice in some Member States where lawyers and notaries submit their SARs to their SRBs, which in turn forward the information to the FIU is determined to have an impact on the effective implementation of the 4th AMLD. In some of these Member States, the practice is for the SRBs to remove the identification of the lawyer or notary upon receipt of the SAR which is detrimental to the timeliness, and especially any potential cases requiring immediate reaction of the FIU. The requests to legal professionals from the FIU through the intermediation of the SRBs would similarly impact effectiveness and potentially trigger concerns related to the confidentiality of the information exchanged.
208. Lack of legal requirement in one (1) of the Member States for SRBs to forward “promptly and unfiltered” the information to FIU has resulted in long delays for such information to be sent to the FIU, which adversely impact the effectiveness of the reporting system. Statistics communicated by the authorities in this Member State shows that they file STRs within an average delay of 100 days.

209. In some Member States, OEs frequently contact the FIU prior to reporting. This practice is described by both banks and the FIU as helpful and effective for the decision-making process. However, in the scope of this cooperation, it can happen that obliged entities abstain from filing an STR or feel the urge to dismiss planned STRs after discussing them with the FIU due to prioritisation. This practice seems to have its cause in the limited FIU resources and raises concerns regarding the effectiveness of the reporting system.
210. The narrower scope of the subjective indicator for ML than the scope of the reporting obligation as envisaged by the Directive, which is suspicion or knowledge that the funds are “the proceeds of a criminal activity”, has resulted into disproportionately low number of transactions reported based on subjective indicators in one (1) of the Member States, across all types of OEs, compared to the number of transactions reported based on objective criteria. Ineffectiveness of the reporting based on objective indicators was furthermore noted in the assessment.
211. One of the reporting mechanisms based on a lower level of suspicion (out of three mechanisms for reporting suspicious transactions) under the national law of another Member State may (indirectly) stimulate defensive reporting practices, as well as serve to justify the lack of more decisive action by OEs in circumstances potentially related to ML as well as affect the overall quality of reporting and subsequent action on the financial intelligence by the competent authorities.
212. In at least one (1) of the Member States, in practice, there are no effective national mechanisms in place, which could ensure ex-ante monitoring and suspension of selected transactions by OEs own decision. Especially in the light of prevention of terrorism financing, and certain types of common associated predicate crimes to ML (e.g., fraud) this approach has a major impact on the effectiveness of the AML/CFT system and practical implementation of Article 35.
213. Lack of clarity in the AML/CFT Law in one (1) of the Member States as to whether the FIU can request information from lawyers, without prejudice to their legal professional privilege to discharge its duties, if no prior report is filed pursuant, has resulted in lack of use of this power by the FIU to request any information from lawyers.

Good practices

214. Some of the good practices that have been observed by the review team in a few Member States in order to ensure the effective implementation of Article 33-36 and Article 46.2 include:
- a) Use of online tools for submission of STRs and to exchange information swiftly with the OEs, including requesting more information and providing feedback on STRs.
 - b) Establishment of a public-private partnerships consisting of competent authorities and private sector members. In one (1) Member State, such a partnership has been established which is driven by the FIU and with representation of the largest commercial banks. The forum is convened on a regular basis and extensive discussions on new and emerging trends are a standard item on the agenda. In addition, the FIU proactively shares intelligence with the members of the forum, and this triggers an important number of STRs from commercial banks. In another Member State, the scope of this public-partnership is widened to include all competent authorities and members from the private sector, such as banks, money remitters, notaries and registers centralised organisms.
 - c) Establishment of a Working Group on Guidance and Information to OEs.
 - d) Developing a close cooperation with the SRBs to effectively communicate the information to certain DNFBPs, such as lawyers and notaries. The SRB communicates information via an internal website whose purpose is not only to publish legal acts

and resolutions of FIU and the SRB, but also to submit any other relevant information, including reports and consultations regarding prevention of ML.

Compensatory Measures and Detrimental Factors

215. Some of the compensatory measures identified in the Member States that ensure the effective implementation of Article 33-36 and Article 46.2 in practice include the following:
- a) A legal provision in one (1) of the Member States that the information related to suspicions of ML/TF needs to be notified to the FIU before the execution of the transaction that might involve ML/TF, but does not clarify that the obliged entity shall refrain from carrying out transactions “until it has complied with the specific instructions from the FIU” as provided by Article 35 of the Directive. Nevertheless, in practice, most obliged entities (except casinos and real estate agents) refrain from carrying suspicious transactions, which is in line with the 4AMLD.
 - b) In one (1) Member State the law makes it mandatory for OEs to indicate in the STR whether a notification was also sent to competent authorities, in accordance with the Criminal Procedure Code, the Ministry of Interior Act and the State Agency for National Security Act. This information is identified to be useful for the FIU in the analysis and dissemination process.
 - c) In one (1) of the Member States, there is no legal requirement in place that would oblige compliance officers to submit a SAR to the FIU of the Member State in whose territory the OE is established. As indicated above, this technical deficiency is mitigated by a provision in the national AML/CFT law which requires the local FIU to promptly share any SAR or information concerning another Member State with the FIU of that Member State.
 - d) Due to the possibility to forward STRs directly to the FIU, the mechanism to file STRs through SRB is used very rarely in practice by lawyers in one (1) of the Member States.
 - e) Despite the fact that one (1) of the Member States has not transposed Article 46.2, in practice efforts are being made to provide OE with information on typologies and indicators that can help with identification of suspicious transactions.
216. Some of the detrimental factors identified in the Member States that impact the effective implementation of Article 33-36 and Article 46.2 in practice include the following:
- a) In one (1) of the Member States reporting attempted suspicious transactions is not mandatory by law and failure to do so is not sanctionable. Statutory deadlines for reporting appear long.
 - b) The blanket exemptions provided for advocates and other independent legal professionals, coupled with potential issues related to (the interpretation of) attorney/client privilege may hamper the effectiveness of the reporting obligations by these types of OEs in the Member States.

Conclusions (suspicious transaction reporting)

217. Article 33-35: In eighteen (18) Member States, major deficiencies have been identified on the effective implementation of Article 33-35; limited deficiencies were identified in one (1) Member State whereas both major and limited deficiencies were identified in eight (8) Member States.

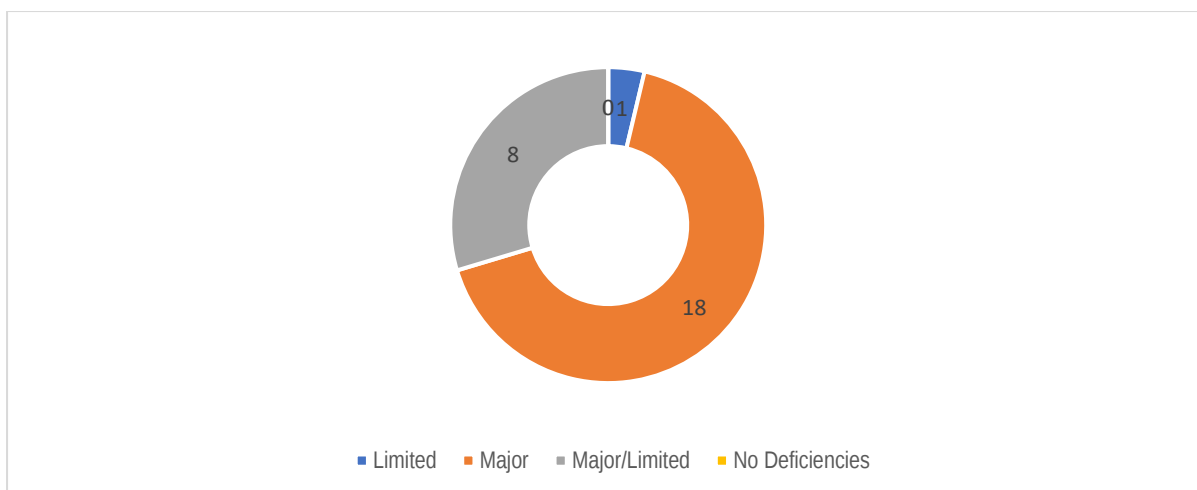


Figure 43. *Status of implementation, Articles 33-35 (Suspicious transaction reporting)*

218. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 33-35 in these Member States.

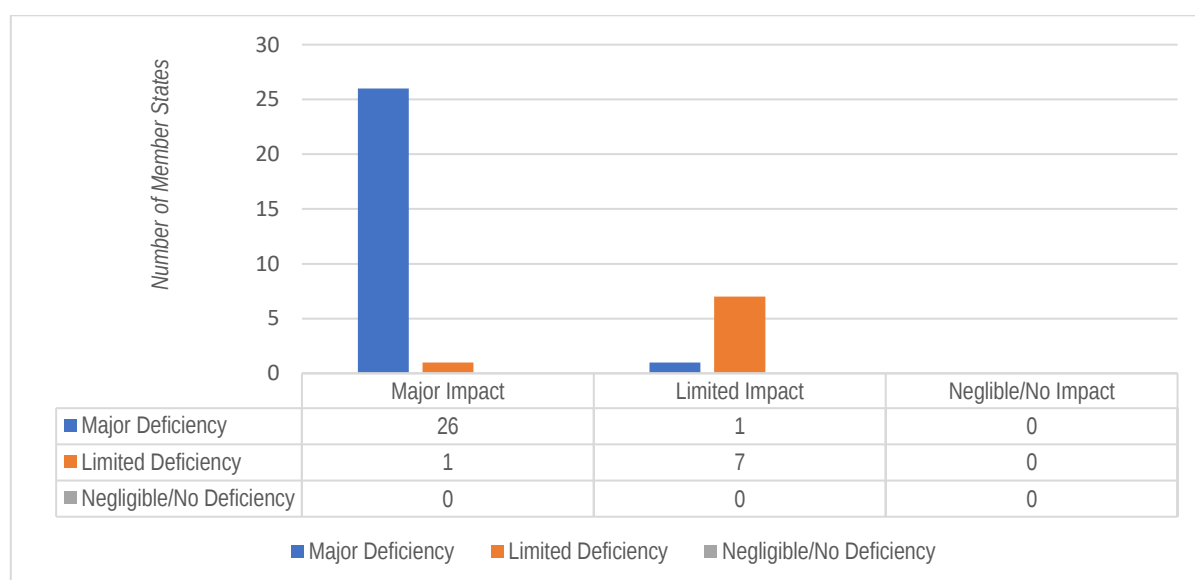


Figure 44. *Deficiencies and impact, Articles 33-35 (Suspicious transaction reporting)*

219. Although credit institutions and a few NBFIs report suspicious transactions at a good level in the majority of Member States, there is still room for improvement when it comes to the reporting levels of smaller banks, most NBFIs, and especially DNFBPs, given their risk profiles and the associated sectoral risks noted in the NRAs. In the majority of Member States, there is also room for improvement in the quality of STRs produced by most OEs, particularly NBFIs and DNFBPs, from both a technical and substantive standpoint. Most Member States also need to put in place appropriate systems to sufficiently record reported attempted transactions. The requirement that OEs, including banks, NBFIs and DNFBPs, delay or suspend a transaction on their own initiative until they inform the FIU and receive further instructions is not effectively implemented in the majority of Member States. The submission of STRs *via* SRBs needs to be amended or strengthened in particular Member States to ensure that it does not impact the efficacy of the STR reporting.

220. Article 36: In sixteen (16) Member States, major deficiencies have been identified on the effective implementation of Article 36; limited deficiencies were identified in one (1) Member State.

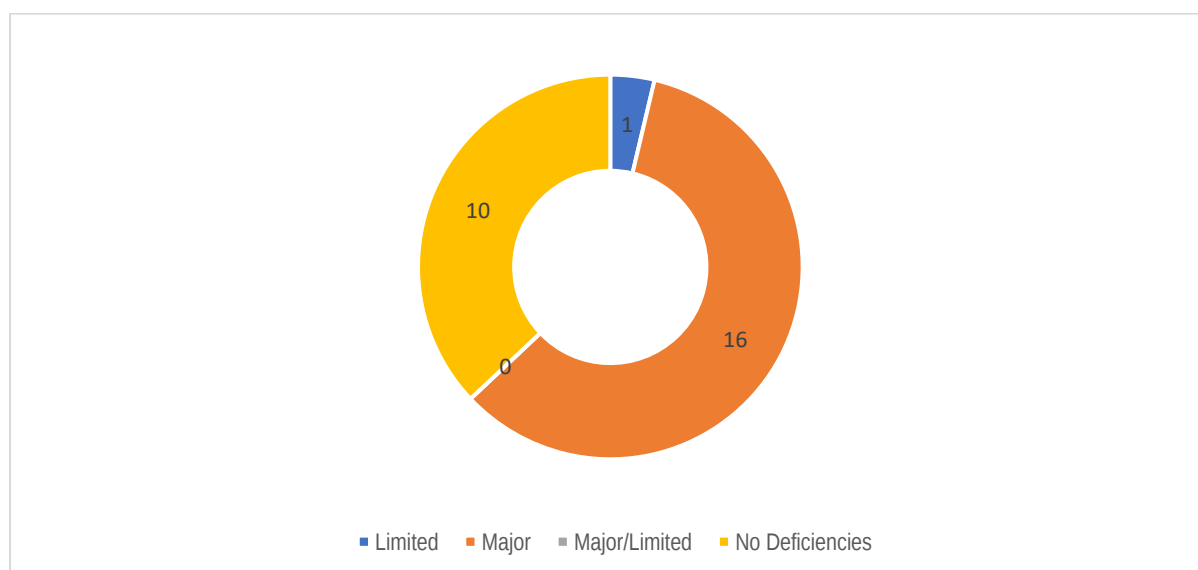


Figure 45. Status of implementation, Article 36 (Suspicious transaction reporting)

221. In seventeen (17) Member States, a deficiency has been identified on the effective implementation of Article 36 that relates to limited or insufficient reporting by supervisors. In all but one Member State the impact of this deficiency has been identified as major.

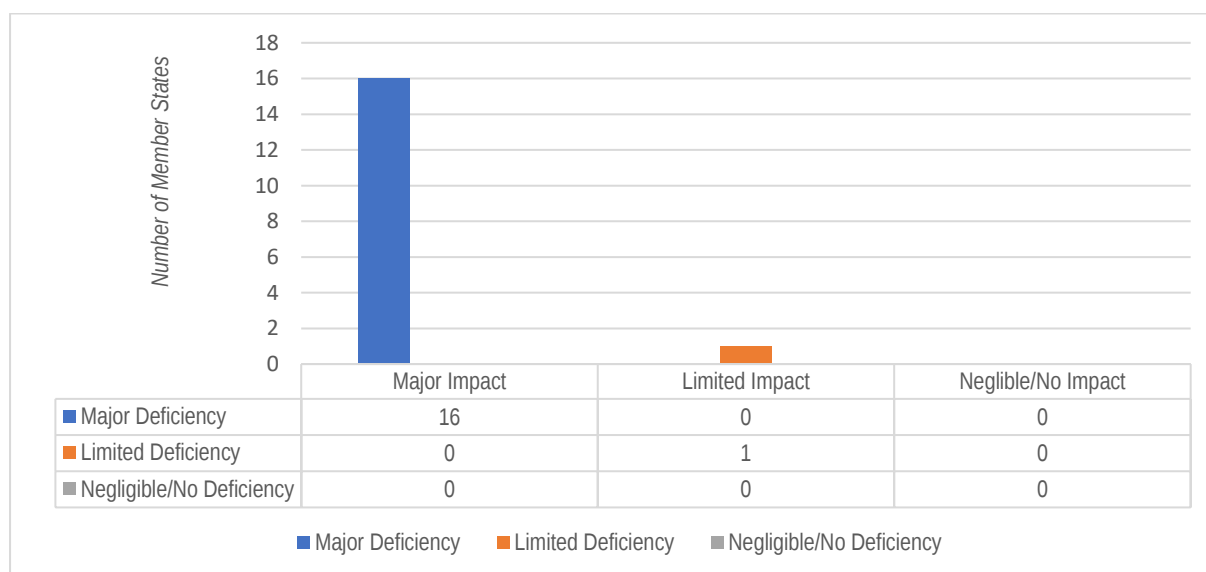


Figure 46. Deficiencies and impact, Article 36 (Suspicious transaction reporting)

222. In order for the competent and supervisory authorities to efficiently identify and submit any facts or suspicions relevant to ML or TF that they might have uncovered during their inspections to the FIU, mechanisms and processes need to be enhanced in the majority of Member States.
223. Article 46. 2: In thirteen (13) Member States, major deficiencies have been identified on the effective implementation of Article 36; limited deficiencies were identified in six (6) Member State.

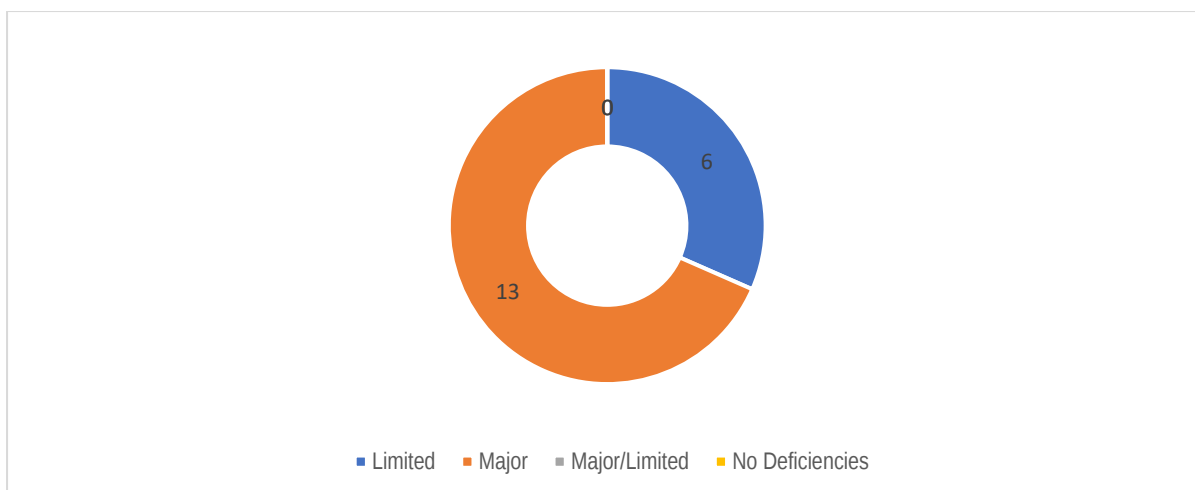


Figure 47. *Status of implementation, Article 46.2 (Suspicious transaction reporting)*

224. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 46.2 in these Member States.

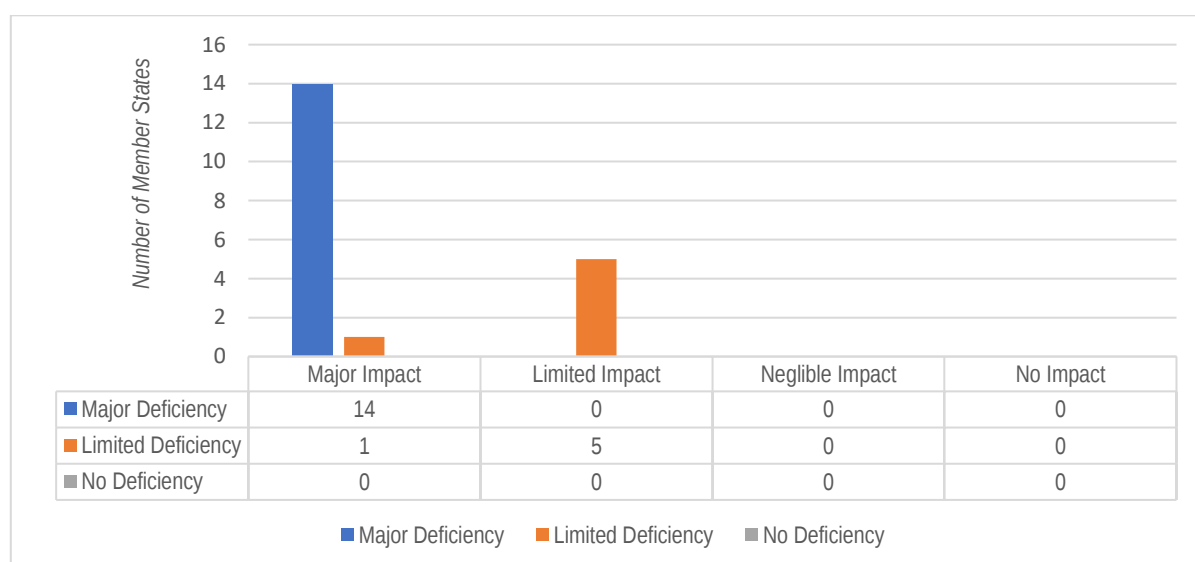


Figure 48. *Deficiencies and impact, Article 46.2 (Suspicious transaction reporting)*

225. The majority of Member States need to provide more guidance and training to OEs, particularly smaller FIs and DNFBPs, about current and emerging trends and typologies of ML/TF, including indications leading to the recognition of suspicious transactions. They also need to conduct more outreach activities for OEs. Additionally, most Member States also need establish a proper mechanism to communicate with OEs on a regular basis and provide timely and sufficient STR-specific feedback about on the quality of the STR or the outcome of the STR analysis.

CHAPTER 7. Application of arrangements in terms of data protection and record retention (Article 40 with AML/CFT relevance)

226. Article 40 outlines the requirements concerning data management of information and document obtained in fulfilment of the obligations under the 4th AMLD. These requirements include the types of information and records that must be retained, the duration of the retention period, deletion of information and destruction of records and circumstances where the retention period may be extended. Some of the major factors underlying effective implementation of Article 40 with AML/CFT relevance were checked as part of assessment process in line with the assessment methodology, include the following:

- a) The extent to which OEs understand and have operationalised controls to ensure that record retention requirements, limits on its use and the destruction of those records, are complied with, and
- b) Guidance and feedback provided by supervisors to OE in order to ensure compliance with these requirements.

Systemic Issues and Deficiencies

227. Overall, in total, thirteen (13) Member States were found to have deficiencies related to the effectiveness of the measures used to comply with Article 40. The main systemic issues and deficiencies noted were as follows:

- a) Extension and Deletion/Destruction Requirements – OEs do not have a clear understanding as to how they are expected to apply the requirements concerning the deletion or data or destruction of records and the test of necessity, proportionality or investigation, to justify extending the maximum retention period. Some OEs report challenges where data is stored with other non-AML data on multiple systems, in terms of ensuring it can be tracked and then deleted in compliance with Article 40's requirements, for example.
- b) Supervisory Oversight and Guidance record – While AML/CFT supervisors review record keeping as part of their onsite examinations, most Member States do not actively verify how OEs manage data and information once the retention period has expired. Supervisors do not verify how OEs apply the retention extension test to justify extending the retention period.
- c) Conflicting Legal Obligations - Some OEs, particularly those from the professional sectors, expressed difficulties in resolving the conflict that was apparent between minimum retention and destruction requirements under AML/CFT regulations and specific rules of their profession which required the retention of certain documents for a longer period. SRBs who oversee these OEs are similarly challenged in needing to determine which of the two obligations takes precedence. In the absence of national level guidance, SRBs will tend towards requiring that professionals retain documentation in compliance with their respective professional codes of conducts or standards, which can exceed the retention period prescribed in the national AML/CFT legislation.

228. The main shortcomings identified by reviewers could be classified into the following typologies:

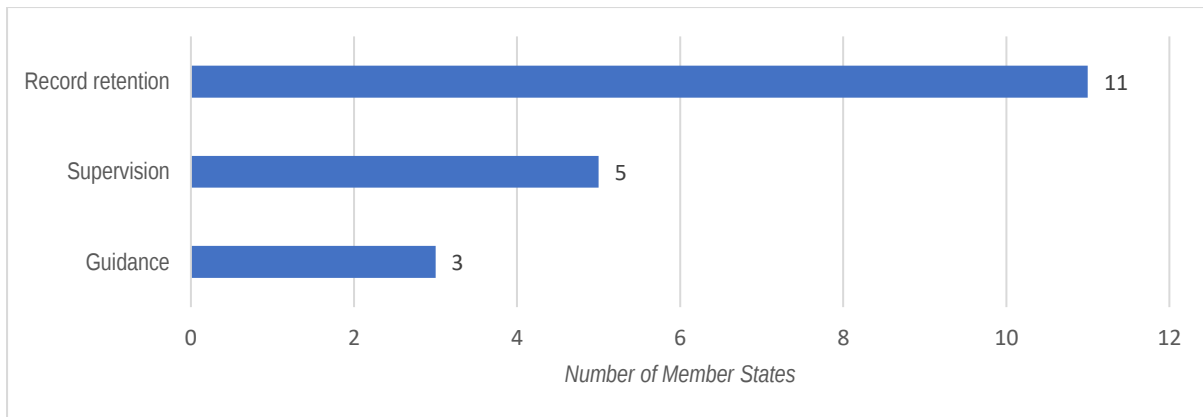


Figure 49. *Typologies of deficiencies, Article 40 (Record retention)*

229. The most predominant typology found was related to record retention, and particularly in relation to extending the retention deadline, found in nine (9) Member States reviewed, and the availability of records, which appears to be connected to CDD collection deficiencies, found in eight (8) Member States. Reviewers also expressed concern that Member States where obliged entities take advantage of third-party reliance, were not ensuring they had access to records held by the third party and that, more importantly, the third party continued to retain those documents in accordance with their national AML/CFT legislation.

230. Further analysis of the data underlying these typologies, disclosed some additional trends:

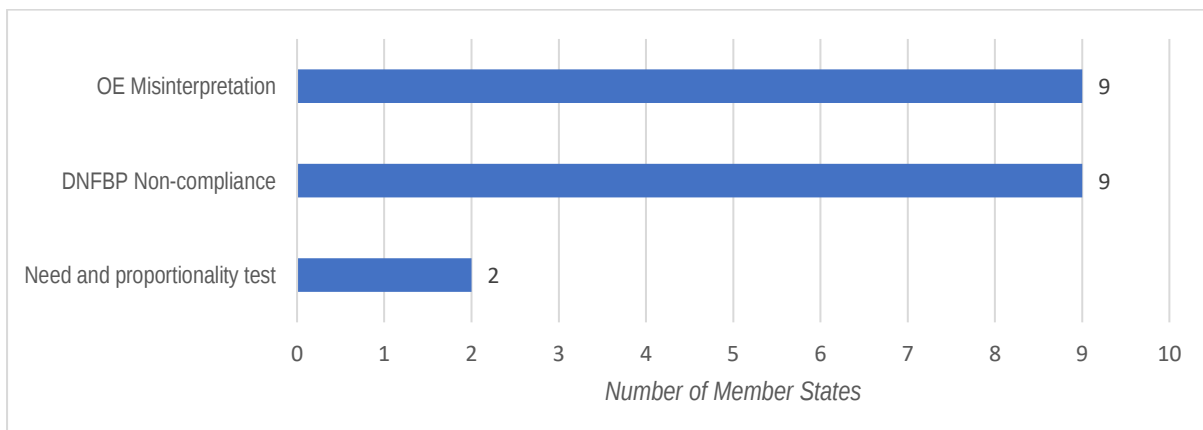


Figure 50. *Additional trends, Article 40 (Record retention)*

231. This further analysis disclosed that, overall, the deficiencies identified across the thirteen (13) Member States were primarily attributed to either non-compliance with Article 40 requirements related to CDD deficiencies by the DNFBP sector or misinterpretation by OEs as to how to apply the requirements under Article 40 (found in nine (9) of Member States with deficiencies). Shortcomings were less attributable to violations of the retention extension test; however, this may be due in part to the fact that supervisors did not appear to be actively assessing the extent to which OEs were applying this test.

Legal Requirements and practices that impact implementation

232. Several legal requirements or practices were identified as affecting the transposition or practical implementation of the requirements under Article 40. These related to the following measures:

- a) In several Member States, the national AML/CFT legislation does not expressly state that upon the expiry of the retention periods referred to in Article 40, personal data must be deleted.
- b) In several Member States, the national AML/CFT legislation provides for the possibility of retaining data for an additional 5 years but does not require that such an extension be based on a thorough assessment of the necessity, proportionality and possible investigation test.
- c) In one (1) Member State, the national AML/CFT legislation generically requires compliance with data protection legislation rather than outline the requirements concerning data deletion and the test for extending the data retention period.
- d) In another Member State, some DNFBPs did not clearly understand how the obligations under Article 40 were not identical to those under the GDPR. As a result, these OEs had understood that they needed explicit permission from customers before they could adhere to the required retention period under the AML legislation, which is not in compliance with Article 40. This can result in some OEs failing to fulfil the retention requirements where a customer refused to provide its consent.
- e) One (1) Member State's national AML/CFT legislation requires that the requisite retention period start from the moment of carrying out a specific transaction rather than from the date of the end of the business relationship which is not in compliance with Article 40. This can result in a significantly shorter retention period for transactional data, which in turn can impact upon effective ongoing OE monitoring and provision of information to the FIU, if so requested.
- f) In another Member State, the national AML/CFT legislation does not provide explicitly for the deletion of personal data. Instead, the National Data Protection supervisor has issued guidelines about the deletion of data. However, neither the national AML/CFT legislation nor the Guidelines state under which circumstances data retention can be extended. This can result in OEs failing to retain data as required under Article 40.
- g) In terms of practices, while some AML/CFT supervisors incorporate a review of Article 40 as part of their supervisory activities, others focused primarily on OE's record-keeping procedures. Some supervisors had not carried out a thorough assessment to determine the circumstances under which OEs may or shall further retain data using the criteria of necessity and proportionality in order to prevent, detect or investigate ML/TF.

Good practices

233. Some of the good practices observed by assessors in several Member States in the effective implementation of Article 40 included the availability of appropriate guidance by supervisors and the effective control of the implementation of the record retention requirements that have resulted in generally good understanding of the OEs (particularly for financial institutions) of the record keeping requirements and the standard retention period under their national AML/CFT regulations.

Compensatory Measures and Detrimental Factors

234. Some of the compensatory measures and detrimental factors identified in relation to the effective implementation of Article 40 were as follows:
- a) OEs demonstrated appropriate practices to ensure that policies and procedures were in place for data retention and that there is a general awareness that personal information collected should only be used for the purpose of preventing money laundering and terrorist financing,

- b) Some OEs have pro-actively engaged with the national data protection office to better understand their obligations related to the scope of information they may process and how customers should be notified of their processing activities,
- c) Competent authorities endeavour to clarify for OEs that Article 40's requirements is not to be treated as a blanket exemption for all data collected,
- d) OEs may be collecting or continuing to retain data under the misguided belief that, in needing to perform CDD or ongoing monitoring, all personal data collected falls within the data retention extension period and that no further measures are required. This risk of non-compliance is potentially compounded by the increasing use by obliged entities of technology that may lead to the processing of personal information beyond the parameters of Article 40's requirements, and
- e) Lack of reliable registration or complete information on certain sectors of OEs (particularly real estate or lawyers) can additionally constitute a detrimental factor in ascertaining whether the relevant data protection and record-retention requirements are followed by such categories of OEs.

Conclusions (Data Protection)

235. Overall, of the thirteen (13) Member States with deficiencies identified under this theme, three (3) were found to have deficiencies with major impact on their compliance with Article 40. Overall, most deficiencies were rated as having a limited impact (10).

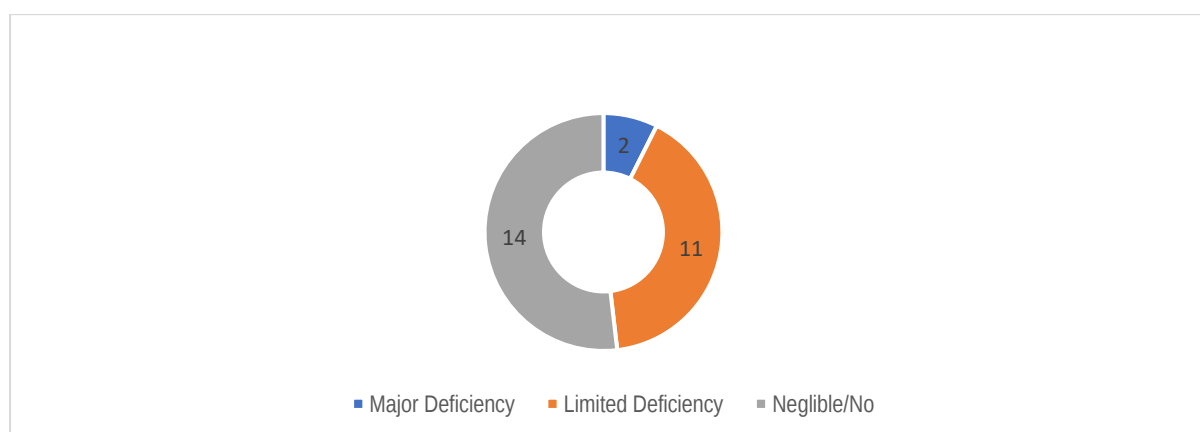


Figure 51. *Status of implementation (Record retention)*

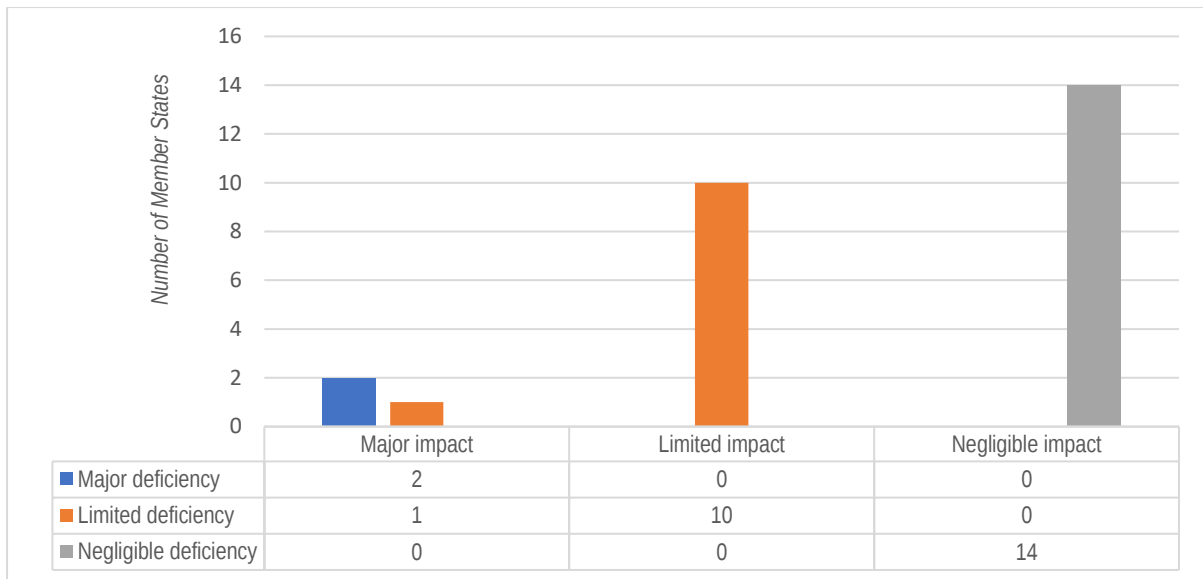


Figure 52. Deficiencies and impact (Record retention)

236. While both OEs and AML/CFT supervisors generally demonstrate an understanding of the data retention requirements, there is a lack of understanding in some sectors as to the linkages between deficient CDD and fulfilment of these requirements. OEs tend to apply a rules-based approach to complying with the maximum retention, but arbitrarily extend such retention periods without demonstrating a proper evaluation of the need and proportionality to do so. In some Member States, OEs and AML/CFT supervisors appear unsure about how the deletion or destruction requirements should be applied. The absence of guidance has resulted in an uneven and inconsistent approach towards the effective application of Article 40's requirements.

CHAPTER 8. Application of measures for supervision of financial institutions and designated non-financial businesses and professions (Articles 47 and 48) and sanctions (Articles 58 and 59)

Sub-theme (a): Supervision of financial institutions and designated non-financial businesses and professions

Article 47 – Market entry

Introduction

237. Articles 47 outlines the requirements related to market entry of specific categories of obliged entities (currency exchange offices and certain DNFBPs).
238. Some of the major factors underlying effective implementation of Articles 47 that were checked as part of assessment process in line with the assessment methodology, include the following:
- a) Obtaining relevant information on beneficial owners and verification of the information obtained as part of the market entry process,
 - b) Effectiveness of application of the market entry criteria particularly for legal professionals, tax consultants, real estate and the gambling sector OEs,
 - c) Effectiveness of ensuring compliance with the requirements including update of the information throughout the existence of the entity,
 - d) Dissuasiveness and proportionality of remedial action taken,
 - e) Measures adopted to mitigate risks of activities carried out without due authorisation and materiality of any unregulated sectors.

Systemic Issues and Deficiencies

239. Overall, twenty-five (25) Member States were found to have deficiencies related to their effective implementation of some aspects of Article 47. Systemic issues and deficiencies where notable trends were detected were as follows:
- a) Licensing and Authorisation - the applied procedures do not fully encompass all elements of Article 47. While such deficiencies are usually compensated for by AML/CFT supervisors overseeing banks and credit institutions, there are significant gaps in the DNFBP sector, as explained further below.
 - b) Fitness and Propriety and Criminal Associations – while AML/CFT supervisors of banks and credit institutions show a mature process in this area, significant gaps and deficiencies were noted by reviewers in the DNFBP sector. These are described further below.
 - c) Data and Statistics - Lack of systemic data management across various supervisors in various Member States concerning licenses refused, revoked, authorisations denied, withdrawn or individuals rejected on fitness and propriety grounds was noted by most reviewers.
240. The main shortcomings identified by reviewers could be classified into the following typologies:
- a) Ongoing monitoring – Failure or deficiencies related to monitoring OEs for fit and proper risks post-authorisation.
 - b) Associates of criminals – BOs – absence or deficiencies related to verification concerning requirements in Article 47.2 - of BOs,

- c) Associates of criminals – management – absence or deficiencies related to verification concerning requirement in Article 47.2 – person holding management function,
- d) F&P requirements – absence of or deficiencies in fitness and propriety criteria,
- e) License or registration requirements – absence of or deficiencies in authorisation requirements related to market entry.

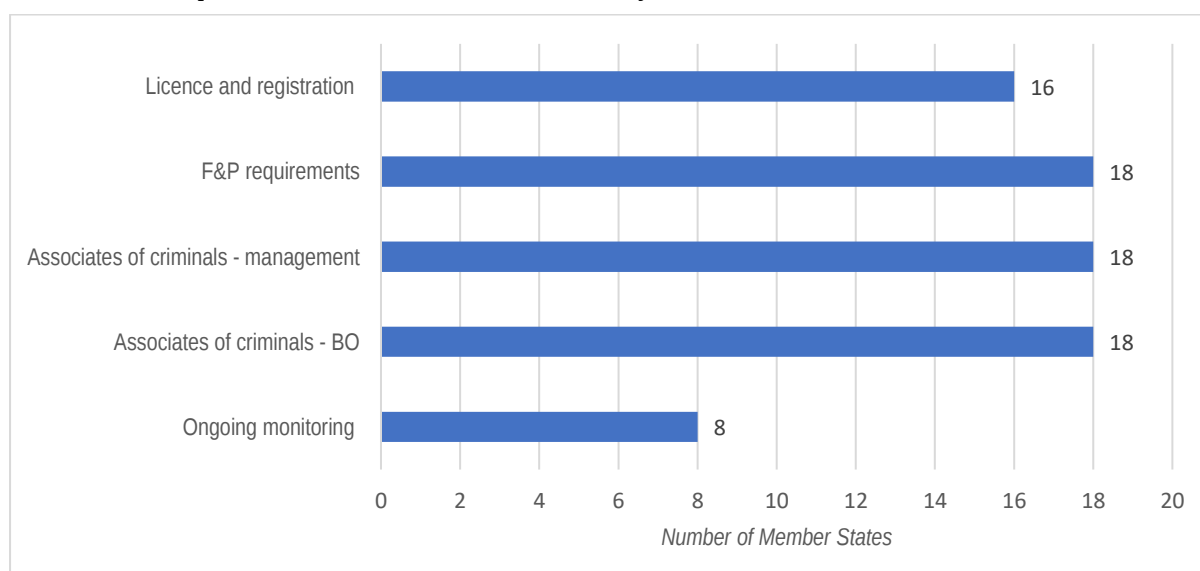


Figure 53. *Typologies of deficiencies, Article 47 (Supervision)*

241. One of the three most common typologies concerned shortcomings in the application by supervisors of all required fit and proper criteria. In certain cases the application of the fit and proper criteria was not sufficiently demonstrated by the authorities (in the lack of any information to substantiate the authorities' position). Shortcomings in relation to this requirement were identified in eighteen (18) Member States.
242. Two other typologies concerned taking the necessary measures to prevent criminals convicted in relevant areas or their associates from holding a management function or from becoming or being beneficial owners. Shortcomings in relation to each of these requirements were identified in eighteen (18) Member States. Other shortcomings noted included the failure by some supervisors to request information from the FIU concerning new market entrants, their beneficial owners or those operating management functions.²⁴
243. Shortcomings in relation to lack or limited implementation of licensing or registration requirements were identified in sixteen (16) Member States. The shortcomings are described under the section on Legal Requirements and Practices above, and mainly relate to those OEs for which licensing or registration requirements are not in place. Certain OEs are not required to comply with any market entry requirements or fitness and propriety tests. There is also in certain cases segregation of responsibilities for the supervision of compliance with market entry requirements and AML/CFT regulations.

Example: In this latter example, one competent authority is responsible for market entry, but is not required under legislation to undertake the verification required under Article 47. Once licensed or authorised, a separate authority, then assumes responsibility for monitoring compliance with ongoing compliance with Article 47 requirements but must revert back to the authorising authority if it is determined that are issues concerning the fitness and propriety of an OE's BOs or management. These segregated

²⁴ Several assessments.

arrangements have the practical effect of hampering the effective application of and ongoing monitoring of compliance with market entry requirements, along with impacting authorities' ability to respond to risks in a timely and appropriate manner.

244. Shortcomings in relation to measures taken to monitor OE owners and individuals holding management functions as to their continued fitness and propriety post-authorisation were identified in approximately eight (8) of the Member States. Some of these relate to the Legal Requirements noted above, but others appear to be connected to the segregation of supervisory responsibilities described under Compensatory Measures and Detrimental Factors above. Anecdotally, some supervisors appear to place significant reliance on prudential teams and self-reporting by OEs to detect changes that might suggest an owner or member of management is no longer fit and proper.²⁵

Example: In a Member State tax advisors and administration offices are in general, not subject to a specific registration or licensing requirement. Membership criteria require that the applicant evidence their good character by ways of a self-declaration. The authority does not pro-actively monitor the fitness and propriety of its members. If it receives a signal suggesting such concerns, they are limited to reviewing what is available in open-source information about the member or what they are permitted to obtain under their association's disciplinary procedures.

245. Further analysis of the data underlying these topologies, disclosed some additional trends related to the affected sectors.

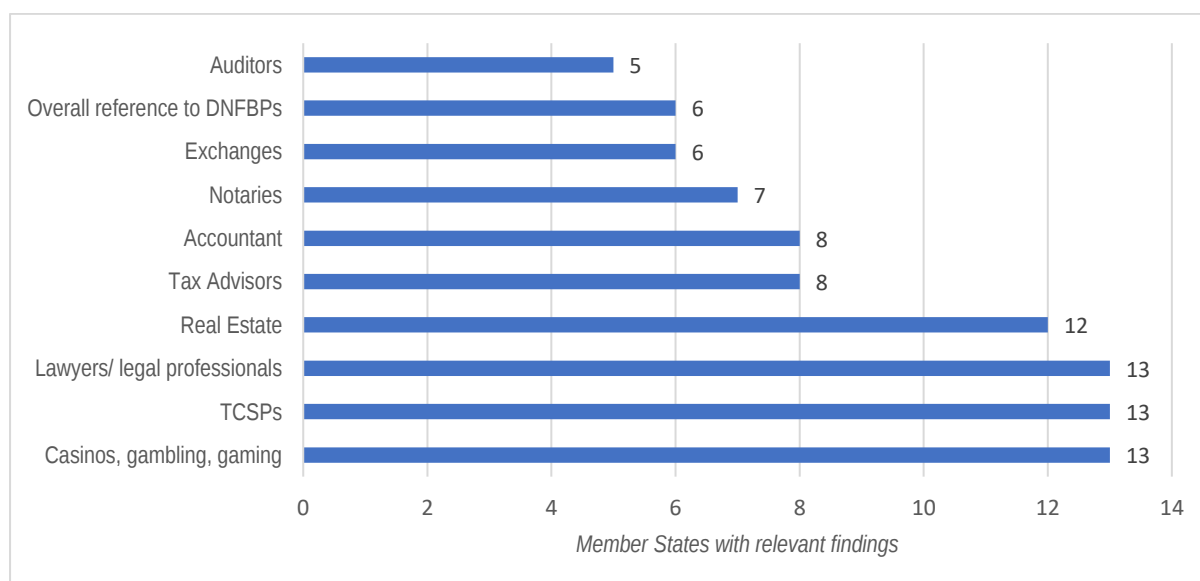


Figure 54. Additional trends, Article 47 (Supervision)

246. Overall, market entry deficiencies were predominantly detected in relation to TCSPs, lawyers and legal professionals and gambling and gaming operations. Real Estate OEs closely followed these findings.

Legal Requirements and practices that impact implementation

247. Deficiencies of transposition related to the following aspects of the 4th AMLD provisions:
- The competent authority responsible for authorisations is not required to perform a further fit and proper test by checking the criminal records of the persons who hold

²⁵ Comments found in contents of reports but not specifically cited in conclusions listing deficiencies.

a management function or the beneficial owners. However, case of issues or breaches of the registration requirements can be identified by the AML/CFT supervisor but can only be acted upon by authorising competent authority (i.e. suspend or cancel the registration).

- b) A number of Member States have no (comprehensive) fit and proper requirements in their legislation for the BO of TCSPs, gambling operators and currency exchange companies.
- c) In a number of Member States, TCSPs (some entities performing similar functions) are not categorised as OEs and thus are not required to comply with market entry requirements.²⁶ Other Member States do not have an adequate registration or licensing regime for TCSPs so as to ensure that market entry requirements are fulfilled. This limit both the AML/CFT supervisor's ability to gain a full picture of the population of TCSPs operating within its jurisdiction and to obtain an informed understanding of the sector (or subsector's) overall risk profile.²⁷
- d) In relation to the gaming sector, a limited number of Member States permit certain gaming activity for which a licence or authorisation is required. This has a similar impact on the effectiveness of supervision, as noted above for unregulated TCSPs. In some Member States, there are no market entry requirements to prevent criminals or their associates from being board members or in charge of the operational management of gaming operators.
- e) In some Member States, DNFBPs - primarily self-regulated professionals governed by professional bodies (SRBs) - are not required by law to comply with market entry requirements laid out in Article 47,²⁸ or specifically, fitness and propriety checks in relation to the management and owners of professional firms.²⁹
- f) Several Member States do not require the licensing or registration of CSPs and a subset of gaming operators. This, therefore means no checks are undertaken to ensure CSP's beneficial owners and management are fit and proper or that criminals or their associates are prevented from being board members. Other Member States require some checks for on CSPs but do not verify whether those holding a management function have a criminal record or are known to be associated with criminals. Some AML/CFT supervisors have no legal mandate to take actions against certain businesses, such as unauthorised MVTs businesses.

Good practices

248. Some of the good practices in certain Member States identified by reviewers regarding the effective implementation of Article 47 included:

- a) AML/CFT Supervisors responsible for banks and credit institutions have mature and well-established procedures and processes to verify the OE's BOs and those who hold a management function are fit and proper. Ongoing monitoring is undertaken, in

²⁶ E.g. In one (1) country, there are no provisions regarding TCSPs, beyond lawyers and notaries when performing activities related to the creation, operation or management of trusts, trust companies, companies, foundations, or similar structures or similar legal arrangements.

²⁷ Example: Business consultants, whose activities include company formations, provision of residency for corporate entities seeking to trade in the EU and provision of directorship services.

²⁸ See one (1) country, external accountants, tax advisors, independent legal professionals (who are not notaries or members of the Bar Association) and estate agents are not regulated professions. Hence, competent authorities cannot take effective measures to prevent criminals from holding management functions in or being the beneficial owners of those OEs.

²⁹ In three countries requirements are not required in law for auditors, accountants and tax advisors.

cooperation with prudential supervisory teams, to identify instances where an OE's existing BO or management member may no longer be fit and proper.³⁰

Example: As part of its due diligence procedure, the AML/CFT supervisors will request information from the FIU, utilise commercially available due diligence systems which screen individuals against a number of sanction lists, the SIS Database operated by the UK's Financial Conduct Authority (FCA), open sources and, where deemed relevant or necessary, the FCA's FIN-NET to see if there is any negative information on the applicant.

- b) In one (1) Member State, an AML/CFT Supervisor who oversees high value dealer has adopted pro-active measures to identify unauthorised activity or evidence that BOs or management of such an OE may not be fit and proper. This includes the use of online open-source data and leveraging data available on national company registries.
- c) Supervisors responsible for overseeing similar OE sectors on a regional basis, pro-actively use measures to share and exchange information about applicants, unauthorised businesses and concerns related to BOs and management members.

Example: National coordination is in place in relation to market entry activities. Sectors that are supervised on a regional basis across the various regions (i.e. gaming, legal profession, DNFBPs) make available to their respective counterparts information concerning rejected applicants and detected unauthorised activity.

- d) Most SRBs in Member States comprising the legal, notarial and auditing professions, will undertake comprehensive checks of prospective members to verify their fitness and propriety. This will include reference to any previous criminal convictions, although there were exceptions in a small number of cases.³¹
- e) SRBs in some Member States, in particular, lawyers, notaries and auditors, leverage their professional code of conduct requirements and oversight powers, to address circumstances where evidence suggests a member may no longer be fit and proper.

Example: The main AML/CFT Supervisor monitors for illegal market activity (i.e. participants operating without the required license or registration). It relies on information and notifications from a variety of sources including OEs, other national supervisors, the Police, and the FIU. Additional signals are received during various national cooperation initiatives and meetings. The Supervisor has also undertaken thematic investigations into illegal operations involving crypto service providers and trust offices and trust offices who had continued to offer services, despite no longer being authorised to do so.

Compensatory Measures and Detrimental Factors

249. Reviewers noted that in some cases, supervisors were able to address legal requirements which were not in conformity to the 4th AMLD's requirements through guidance, practices or the application of additional market entry checks of new market entrants. These had the practical effect of achieving technical compliance with the Directive's requirements. However, other legal arrangements could be compensated through these means. Some of the compensatory measures and detrimental factors included the following:
- a) Overall, most Member States had mechanisms in place for the regulation of currency exchange obliged entities and cheque cashing offices, with only six (6) Member States

³⁰ Several different assessments

³¹ In one (1) country no checks for criminal records upon registration of independent legal professionals and tax advisors were made.

having partial discrepancies around the scope of the checks undertaken on BOs and management members. Very limited deficiencies were identified with respect to the transposition or application of Articles 47. These were primarily attributable to the legal arrangements in place in the respective Member State, as mentioned above.

- b) In isolated cases the lack of adequate market entry rules and appropriate compliance arrangements for several DNFBPs, as well as the practical lack of supervision for their compliance with AML/CFT requirements, creates an environment substantially undermining effectiveness of the efforts aimed at implementation of the requirements for supervision and sanctioning.
- c) Some supervisors attempt to identify such entities by relying upon the OE's obligation to register as a business on the national company register or national Chamber of Commerce. However, in general, limited or no checks are undertaken by the registry or Chambers (and supervisors) to verify that persons holding a management function for any of these types of OEs or who are BOs are fit and proper persons.³²
- d) Some SRBs rely on their professional entry requirements to check the fitness and propriety of its members. However, some SRBs rely upon self-declarations from applicant and do not conduct independent checks of their professional background or possible criminal associations.
- e) The analysis across assessments suggests that market entry requirements are less effective where the legal framework is such that the supervisor responsible for licensing or registration of OEs, is not the same competent authority responsible for overseeing the same OE sector for AML/CFT compliance. When fitness and propriety concerns emerge during post authorisation monitoring, the AML/CFT supervisor in some Member States is thus not empowered to take action to address this risk. Instead, the matter should be referred to the authorising competent authority. This can lead to delays in taking timely action to address market entry risks, including where an individual is found to associate with criminals. Given the deficiencies noted concerning supervisory resources and sanctions (see below), such oversight arrangements appear to be detrimental to the effective implementation of the requirements of Article 47.

Example: In a Member State one authority is responsible for the registration process of currency exchange offices and another - for the AML/CFT supervision of currency exchanges. The authority responsible for registration does not do a further fit and proper test by checking the criminal records of the persons who hold a management function or the beneficial owners. In case of issues or breaches of the registration requirements, the AML/CFT supervisor will inform the registration authority which subsequently suspend or cancel the registration.

Conclusion (Market Entry)

250. Overall, twenty-five (25) Member States were found to have deficiencies concerning their effective compliance with Article 47. The majority of reviews – nineteen (19) were found by assessors to have only major deficiencies resulting in a major impact on the Member's States effective compliance with Article 47, while four (4) were found to have only limited deficiencies.

³² Several assessments.

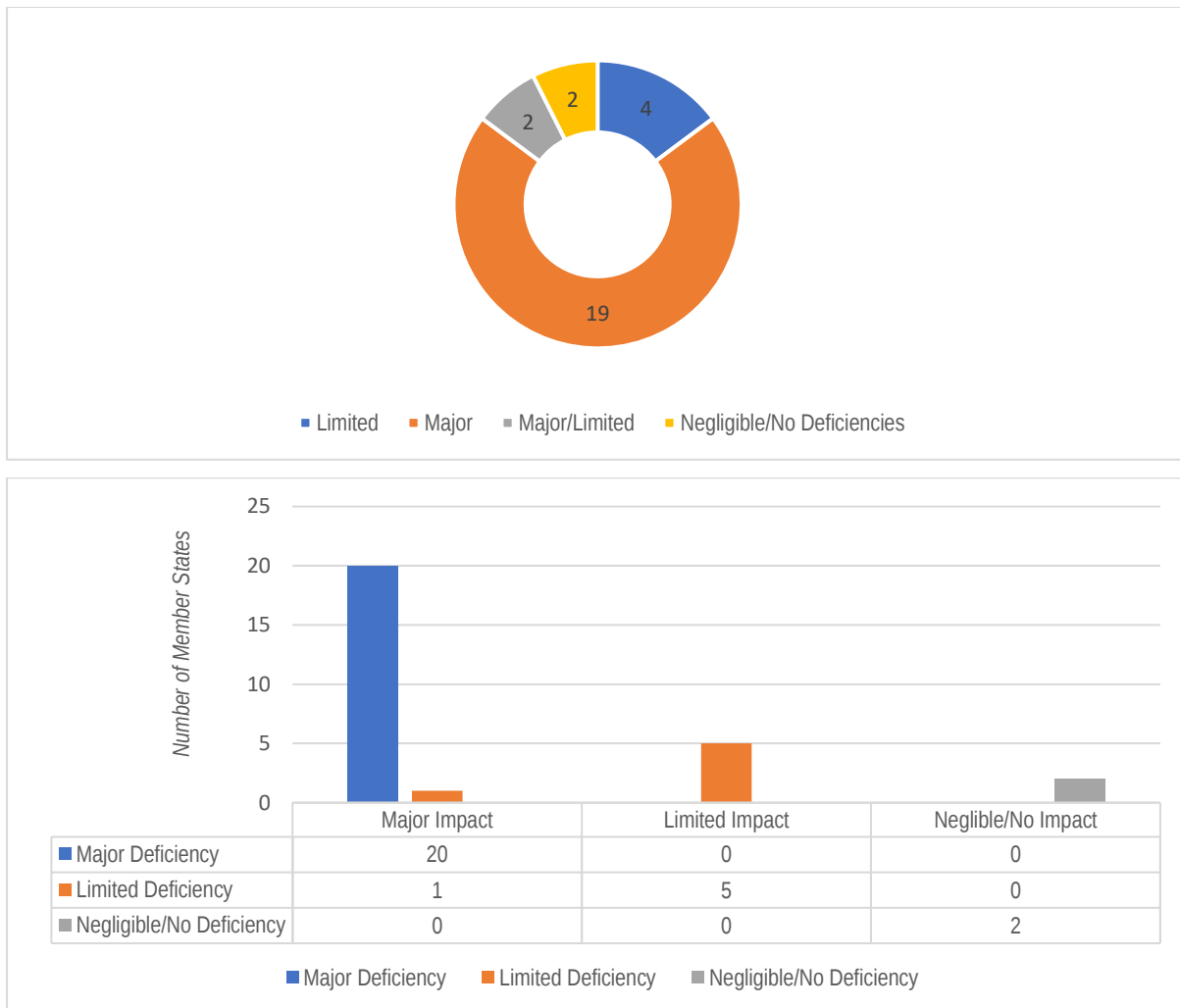


Figure 55 and 56. Status of implementation and impact of deficiencies, Article 47 (Supervision)

251. The assessment results disclose that non-compliance with Article 47 in some Member States is attributable in some sectors to the legal arrangements or frameworks related to market entry requirements. Some competent authorities either have no or insufficient powers to ensure that the fitness propriety of certain OE's BOs or members of management are verified at the time of market entry. Some Member States' legal arrangements whereby responsibility for market entry compliance is divided between two different supervisors, appears to be having a practical impact on effective implementation of these requirements. These latter shortcomings are likely to be compounded further where national coordination and cooperation measures as between supervisors with shared responsibilities such as these, are also found to be deficient.
252. The assessment finding suggest that more work is needed in the DNFBPs sectors to raise the level of effective compliance with Article 47. Greater focus is required on verification of BOs and individual performing management functions in terms of both their fitness and propriety and possible criminal associations both prior to and during the period in which an OE is licensed or registered. Where responsibility for market entry requirements is split between AML/CFT and non-AML/CFT supervisors, gaps exist as to which competent authority is responsible for undertaking these checks and ensuring that coordination between the authorities ensures that a timely response can be made to detected risks in this area. While some SRBs effectively leverage their entry criteria requirements to check individual's fitness and propriety, the level of stringency is not consistent across all SRBs

and reliance upon self-declarations is not seen as an effective means by which to satisfy the requirements of Article 47.

Article 48 – General supervision

Introduction

253. Article 48 outlines the main supervisory responsibilities of AML/CFT competent authorities responsible for overseeing OE compliance with AML/CFT national legislation. The requirements of this article include ensuring that effective monitoring of OE, and that measures are taken to ensure compliance by OEs with the requirements in the national AML/CFT legislation, adequate powers and resources of the competent authorities to fulfil the above responsibilities, high professional standards of staff and enhanced supervisory powers in the case of credit institutions, financial institutions and providers of gambling services.
254. Some of the major factors underlying effective implementation of Article 48 that were checked as part of assessment process in line with the assessment methodology, include the following:
- a) Overall effectiveness of implemented supervisory measures,
 - b) Intensity (i.e. frequency and depth) of OE monitoring,
 - c) Structure and resourcing of AML/CFT supervisors,
 - d) Application of the risk-based approach to supervision, including understanding of the risks and the implementation of the ML/FT risk assessment model or methodology,
 - e) Approach taken by supervisors, during their examination of OEs, in relation to their use of new technologies,
 - f) Availability of sufficient guidance (on CDD related to new technologies, application of measures related to existing customers, etc.) and OEs' awareness of the supervisory expectations,
 - g) Supervision in a cross-border context including passporting entities and group policies, and specifically the extent to which, for certain sector, these entities were factored into the supervisory planning and how these entities are assessed under OE risk assessment methodology, and
 - h) Supervisory tools utilised by supervisory authorities and, in particular, AML/CFT inspections (both on-site and off-site), the post inspection process and the actions following findings of AML/CFT non-compliance.

Systemic Issues and Deficiencies

255. Overall, all Member States reviewed were found to have deficiencies related to their effective implementation of some aspects of Article 48. Systemic issues and deficiencies where notable trends were detected included the following:
- a) Misalignment between the risk rating of some OE sectors by the supervisor and the risk rating assigned in the NRA, with some supervisors referring to the results as inaccurate or outdated.
 - b) Lack of sectoral risk assessments, lack of understanding about the risk profile of the OEs within sectors and the lack or insufficient RBA in the supervision of certain sectors, including sectors that are particularly material (banking and gambling sectors) or for sectors that have been identified in the national NRA as posing a higher risk. Inconsistencies are seen across DNFBPs and SRBs.

- c) Other than supervisors of credit institutions, onsite examinations are not consistently planned for and executed by other supervisors, commensurate with the risk profile of the OEs they supervise and/or risks identified in the NRA and the findings from previous examinations.
 - d) Supervisors undertaking risk assessments of certain OE sectors use a methodology originally designed to assess risks and control frameworks associated with banks and credit institutions, with no consideration of the risk-relevant differences unique to the sectors being assessed.
 - e) Some supervisors remain significantly under-resourced given the breadth and depth of their AML/CFT responsibilities and associated workload. This is severely hindering their capacity to implement risk based and effective supervisory programmes.
 - f) Some competent authorities acting as home/host supervisor to passporting entities and OEs with branches and subsidiaries in other countries do not actively engage in supervision of hosted OEs or actively establish cross-border communication and coordination for their supervision with other Member State supervisors.
 - g) The majority of supervisors do not work to a methodology for assessing the effectiveness of their supervisory activities and whether they achieve the desired outcome (i.e. deter non-compliance behaviour / achieve greater compliance with the AML/CFT requirements etc.)
256. The most common typologies of shortcomings in relation to the effective implementation of Article 48 are summarised below. All Member States were found to have deficiencies related to the effectiveness of the measures used to comply with Article 48. The main typologies of shortcomings identified by reviewers could be classified into the following:
- a) Monitoring and oversight – Deficiencies in relation to supervisor’s effectiveness in undertaking risk-based monitoring and taking measures necessary to ensure OE compliance with AML/CFT requirements (Article 48.1 and 48.7),
 - b) Adequacy – Deficiencies relating to some supervisors’ financial, human and/or technical resources (Article 48.2),
 - c) ML/TF risks – Deficiencies in some supervisors’ understanding of or alignment to ML/TF risks identified in NRA (Article 48.6),
 - d) Sectoral/OE risks – Deficiencies in relation to some supervisors’ understanding or effective risk assessment of sectoral and OE level risk profiles (Article 48.7),
 - e) Host Supervision/ Home Supervision – Failure by some supervisors to effectively supervise passporting OEs.

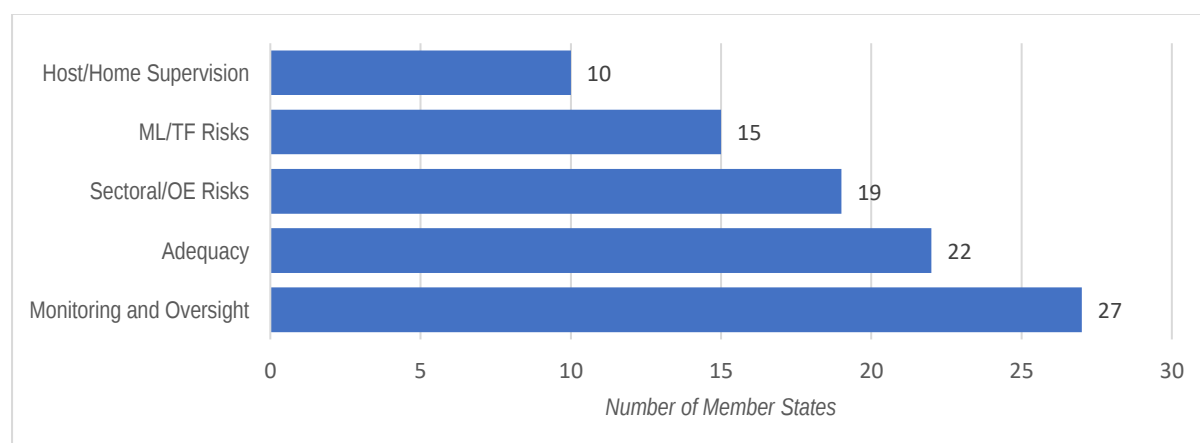


Figure 57. *Typologies of deficiencies, Article 48 (Supervision)*

257. The most common typology concerned shortcomings in relation to supervisor's effectiveness in undertaking risk-based monitoring and taking measures necessary to ensure OE compliance with AML/CFT requirements. All Member States were found to have some shortcomings based on this typology. Shortcomings identified in relation to this typology included:

- a) Some supervisors do not conduct risk-based AML/CFT supervision nor have procedures or practices for the application of risk-based supervision to ascertain compliance with AML/CFT requirements. Some supervisors, notably SRBs, primarily apply a rule-based approach towards their supervision of OE AML/CFT compliance;
- b) Over-reliance by some supervisors on data provided in offsite questionnaires completed by OEs as the basis for determining the scope of supervisory activity;³³
- c) Lack of RBA procedures for the conducting both on-site and off-site inspections;
- d) Significant deficiencies in the risk-based approach over DNFBP supervision and serious concerns as to the nature, scope, depth and quality of any inspections conducted and no AML/CFT supervision of some DNFBP sectors;³⁴
- e) Failure to have a methodology in place by which to assess overall effectiveness of planned supervisory measures and to build from those experiences to improve overall supervisory practices;
- f) With the exception of most banking supervisors, supervisory planning by some supervisors does not always appear to be based on the results of sectoral risk assessments or individual OE risk assessments, but is primarily driven by resourcing considerations;³⁵
- g) Onsite supervision of the non-bank OEs has been very limited in some Member States;
- h) Number and scope as well as duration of onsite visits undertaken appear inadequate in view of the risks identified in the NRA and the findings from previous examinations;³⁶
- i) Scope and frequency of visits for medium- and low risk rated OEs in some Member States is based on long intervals of time or sometimes visits are not undertaken at all unless a trigger event occurs. Reviewers determined this was inadequate, in view of the complexity of certain OE businesses, the volumes of transactions processed and the significant cross-border nature of their activities;
- j) Conduct of on-site examinations is not based on risks or risk profiles of OEs;³⁷
- k) Effectiveness of onsite and offsite engagement is relatively minimal considering size and risks in the sectors supervised;
- l) Limited use of available supervisory powers in response to trigger event or ongoing monitoring for detection on non-compliance;
- m) Insufficient inspections of foreign FIs passporting into some Member States;³⁸ and
- n) Overarching lack of comprehensive, reliable and detailed statistics on the types, scope and outcomes of supervisory interventions.

³³ Several assessments.

³⁴ Several assessments.

³⁵ Several assessments.

³⁶ Several different examinations.

³⁷ Several assessments.

³⁸ Several different assessments including banks, investment, MVTs and PSPs.

258. The second typology concerned supervisors' financial, human and/or technical resources. Shortcomings identified in relation to this typology included:
- a) Human resources are still insufficient in the case of several AML/CFT supervisors considering the number of supervised entities;³⁹
 - b) Some OEs do not have a dedicated AML/CFT supervision unit and rely on prudential staff to be responsible for AML/CFT supervision as well thus reducing the time and resources available to conduct more in-depth examinations, on a risk-basis;
 - c) Reliance upon external parties in some Member States to fulfil resourcing gaps by performing quasi regulatory tasks such as on-site visits, training and provision of guidance to various OEs, with the result being a key dependency risk stemming from the incompetent performance of these tasks by the external parties or those parties ceasing to perform these tasks;
 - d) Perception that engaging directly with OEs concerning AML/CFT non-compliance with ongoing supervisory interaction thereafter is effective in improving overall compliance. In fact, considerable resource is expended, and exam results do not reflect in for all supervisors who adopt this approach, a notable reduction in the number of AML/CFT deficiencies found;⁴⁰ and
 - e) Failure in some Member States to scale resources and expertise commensurate with the growth and use of technology by OEs to properly evaluate the risks and controls required to mitigate them.
259. The third typology was related to supervisors' understanding or effective risk assessment of sectoral and OE level risk profiles. Shortcomings identified in relation to this typology included:
- a) Some supervisors have not yet performed a sectoral risk assessment for the OE sectors which they supervise,
 - b) Methodology used by some supervisors for risk rating OEs is not tailored to different sectors and does not take into account all relevant factors (changes to risk exposure, insufficient controls),⁴¹
 - c) Insufficiently comprehensive assessment conducted by some supervisors of sectoral/products/services risk in certain sectors (e.g. gambling and banks),
 - d) Other supervisors apply methodologies to risk assess OEs that are mostly based on factors relating to the OE, but less on inherent risk factors relating to type of customers, geography, products, delivery channels or transactions,⁴²
 - e) Risk scoring models used by some supervisors do not take into account foreign operations and it is unclear whether the identification of the residual risk for such groups would take into account the group holistically,
 - f) The AML/CFT risk model used by some supervisors to undertake OE assessments is based mainly on prudential and financial information which could result in only focusing on the larger obliged entities and not per se on the riskier entities,
 - g) With some supervisors, it was unclear how data requested from OEs was incorporated into the OE risk assessment process, based on the models used;⁴³ other

³⁹ Several supervisors across different assessments.

⁴⁰ Several assessments.

⁴¹ Several assessments.

⁴² E.g. in one (1) Member State, the methodologies of competent supervisory authorities to determine the risks of notaries, lawyers, auditors and gambling operators do not take into account inherent risk factors relating to type of customers, transactions or geography.

⁴³ Several assessments.

supervisors primarily relied upon data from offsite questionnaires completed by OEs as the primary source of information relied upon to conduct OE risk profiling,

- h) Methodology used to assess OEs fails to take account of the particular ML/FT vulnerabilities and business models of the entities in those sectors,
- i) Insufficient knowledge by some supervisors relating to the AML/CFT risks associated with some of the OEs which they oversee,
- j) Inadequate understanding of the scope of AML/CFT risks associated with products such as citizen investment products, misuse of legal entities, etc.
- k) Some supervisors are reactive in identifying (new or developing) ML and TF risks beyond those identified in the NRA, and
- l) Some supervisors do not collect data in a structured manner on inherent risk elements, structural factors such as size and ownership/control of the real estate agents, or effective implementation of controls.

260. The fourth typology related to supervisors' understanding of or alignment to ML/TF risks identified in NRA. This would have a corresponding effect on the risk models or methodologies used to assess OE a sectoral risk (see above). Additional shortcomings identified in relation to this typology included:

- a) Limited understanding and different perceptions by some supervisors about the major ML/TF risks to which their sectors are exposed,
- b) Lack of comprehensive, uniform and up-to-date understanding of ML/TF risks in the country,
- c) Insufficient focus of SRBs on the monitoring of high-risk situations as described in the NRA,
- d) Outcome of the NRA was considered by some supervisors not to reflect the real risk profile of the sectors overseen by them,
- e) Outcome of the NRA was not reflected by some supervisors in the guidance issued to OE or questionnaires used to collect data from OEs, and
- f) Absence of any adjustment and review of supervision approach or plan in response to the outcomes of NRA updates.

261. The final typology related to failure by some supervisors to effectively supervise passporting OEs. In some Member States additional shortcomings identified in relation to this typology included:

- a) In some Member States, insufficient on-site inspections of foreign FIs' subsidiaries were undertaken, relative to their risk profile,
- b) It appears that some supervisors responsible for passporting entities have misinterpreted Article 48 requirement. They appear to be undertaking "light touch supervision" of these entities based on the belief that this is the primary responsibility of the home supervisor. These OEs are therefore not always supervised on a risk-basis,⁴⁴
- c) Despite some supervisors employing the use of central points of contact for passporting entities (i.e. PSPs), this requirement does not appear to have been leveraged to ensure that cross-border communication between supervisors about AML compliance is timely and effective, and

⁴⁴ Several assessments.

- d) Given the low number of inspections undertaken in some Member States of sectors such as investment and payment services, it appears that minimal information is obtained by some Member States about passporting OEs AML/CFT compliance that should be shared with the home supervisor to ensure that effective supervised reaction and oversight takes place on a cross-border basis.

Legal Requirements and practices that impact implementation

262. Some legal requirements or practices were identified but in most assessments, reviewers determined these deficiencies had a negligible effect on overall effectiveness. This is to say that where deficiencies were identified, these were more attributable the types of factors noted in the preceding section (systemic issues and deficiencies) not due to transposition or non-conforming deficiencies. Nevertheless, some of these deficiencies were determined as potentially having a major impact on the effective implementation of international cooperation.⁴⁵ Some of the material legal requirements or practices identified by reviewers included the following:

- a) Legal framework - In some Member States, there are a large number of competent authorities responsible for overseeing compliance with national AML/CFT requirements. The supervisors have overlapping responsibility for ensuring compliance by certain OE sectors with the AML/CFT requirements. In some instances, one supervisor will be responsible for overseeing compliance with a specific requirement (for example, suspicious activity reporting), whereas others will share similar responsibilities and conduct similar supervisory activities with the same OE who may have operations in more than one region of the Member State.
- b) Cross Border Entities - Oversight of cross border entities who have passported may be hampered in some jurisdictions by the failure to fully replicate Article 48. In one (1) Member State, the provisions dealing with the supervision passporting e-money issuers and PSPs does not explicitly include taking temporary appropriate and proportionate measures to address serious failings that require immediate remedies.
- c) RBA - AML/CFT legislation in one (1) Member State does not include requirements on how certain competent authorities should apply a risk-based approach to supervision and on the periodic review of risk assessments.
- d) Resourcing - In another Member State, there are no legal provisions requiring these organizations to have sufficient financial, human and technical resources.
- e) Practices – Prudential Team Resources – In some Member States supervision for AML/CFT compliance of certain financial institutions was conducted by members of existing prudential teams or some AML topics were inspected as part of prudential planned inspections as a form of joint activity. It is noted that joint supervision, which is prudential based, could dilute the essence of the AML/CFT supervision and high-risk areas that require dedicated testing.
- f) Practices – RBA and leveraging of data - Statistics regarding off-site surveillance and on-site inspections of OEs across all Member States were either incomplete, out of date or not maintained. The statistics that were available do not demonstrate that all supervisors apply a RBA approach, whereby the frequency and intensity of supervisory interventions stemmed from the OE and sectoral risk profiles. It is therefore not clear, when supervisors state they take account of all data available to them in their assignment of a risk rating, whether this is done only on a case-by-case

⁴⁵ See, for example one (1) Member State in which there was failure to transpose the obligation in Article 48 to ensure that competent authorities of the Member State in which the obliged entity operates establishments supervise that those establishments respect the national provisions of that Member State transposing the Directive.

basis, rather than at a sectoral level, based on the absence of formalised data management practices.

Good practices

263. Some of the good practices identified by reviewers regarding the effective implementation of Article 48 included the following measures:

- a) Supervisors have issued regulations, guidelines or other information material for OEs which are provided to all OEs to further explain how AML/CFT requirements should be applied,
- b) Supervisors have developed very accessible and substantive AML/CFT area on its website about AML/CFT,
- c) The FIU supports OE's understanding of AML/CFT risks, obligations and reporting requirements in the form of materials posted on its website, and through relevant training.

Example: The supervisor has pro-actively undertaken to reduce the presence of unacceptably higher-risk OEs, products and services, improvement of controls used by banks and other financial institutions, as well as enhancing the risk culture within the private sector using supervisory powers to revoke authorisations of OEs and remove unfit members of management. This has included revoking authorisation of OEs with no physical presence in the jurisdiction and therefore no practical means by which supervisors can ensure their compliance with the national AML/CFT requirements.

Example: The authorities in a Member State have ensured broad communication about Enhanced Due Diligence (EDD) and high degree of outreach on the results of the national risk assessment. Scenarios and examples are provided to obliged entities via sectoral risk assessments, oversight bodies and supervisors, well accessible websites and clear outreach, with typologies, questionnaires and model checklists, also by the Financial Intelligence Unit.

Compensatory Measures and Detrimental Factors

264. Some of the compensatory measures and detrimental factors identified in relation to the effective implementation of Article 48 were as follows:

- a) Some supervisors are currently in a period of transition, and during reviews were in the process of changes such as their number of AML/CFT staff, structure of AML/CFT teams responsible for supervision, review of their sectoral and OE assessment methodologies and, in the case of some DBFBP sectors, introduction of a more risk-based approach towards their supervisory activities.
- b) Some supervisors are in the process of refocusing their supervisory efforts towards other OE sectors, such as PSPs' crypto businesses and other non-banking OEs.
- c) Various deficiencies in the NRAs, including the lack of information or insufficient granularity for certain sectors, have an effect on the understanding and application of the risk-based approach by the competent authorities,
- d) Some supervisors have disproportionately focused their supervisory resources on banking and MVTs, and as a result, have devoted less time and resources towards non-bank FIs and DNFBPs.

- e) The lack of appropriate compliance arrangements for a number of DNFBPs, as well as the practical lack of supervision for their compliance with AML/CFT requirements creates an environment substantially undermining effectiveness of the efforts aimed at implementation of the requirements for supervision and sanctioning.
- f) Some supervisors are responsible for overseeing very large populations of OEs, who may vary in scope and size and geographic location. Although many of these supervisors have resorted to creative efforts to address this challenge, it is difficult for them to conduct a thorough risk profiling of their sectors, without additional resources such as technology or more formalised statistics gathering.⁴⁶
- g) A small number of supervisors, particularly in the DNFBPs and SRB sectors, appear to not be fully convinced as to the value of applying a risk-based approach towards its supervisory activities, based upon the undertaking of an informed risk assessment of its target population.
- h) The multiplicity of competent authorities in some Member States makes it difficult for supervisors to ensure that their planning is coordinated and reduces the risk of resourcing overlap. Similarly, there is a risk that in the absence of effective coordination, OEs supervised by more than one authority are at risk of receiving different or contradictory guidance on how to comply with national AML/CFT Key requirements.
- i) In one (1) Member State, prohibition on the use of credit cards or payment cards or the placement of ATMs in casinos, has the unintended consequences of increasing the risk exposure of casinos because of the consequent increase in the use of cash, which is broadly considered to be an important ML vulnerability.

Example: A Member State's stated aim is to create chains of obliged entities who overlap and thereby *de facto* control each other by all reporting on the same financial flow or transaction from different angles. This results ideally in a double or even triple application of the preventive measures, reporting of suspicion, and multiple opportunities for supervisory oversight and correction of dysfunctional elements of the preventive chain of operators. Participants of this setup are appropriately guided and understand its flow and many obliged entities seem to actively cooperate with each other in application of standardised procedures.

Conclusion (Supervision)

265. Overall, nineteen (19) of all Member States reviewed were found to have major deficiencies. These included deficiencies across all or most OE sectors in relation to their compliance with Article 48's requirements. Only limited deficiencies were found in three (3) Member States.

⁴⁶ Various jurisdictions.

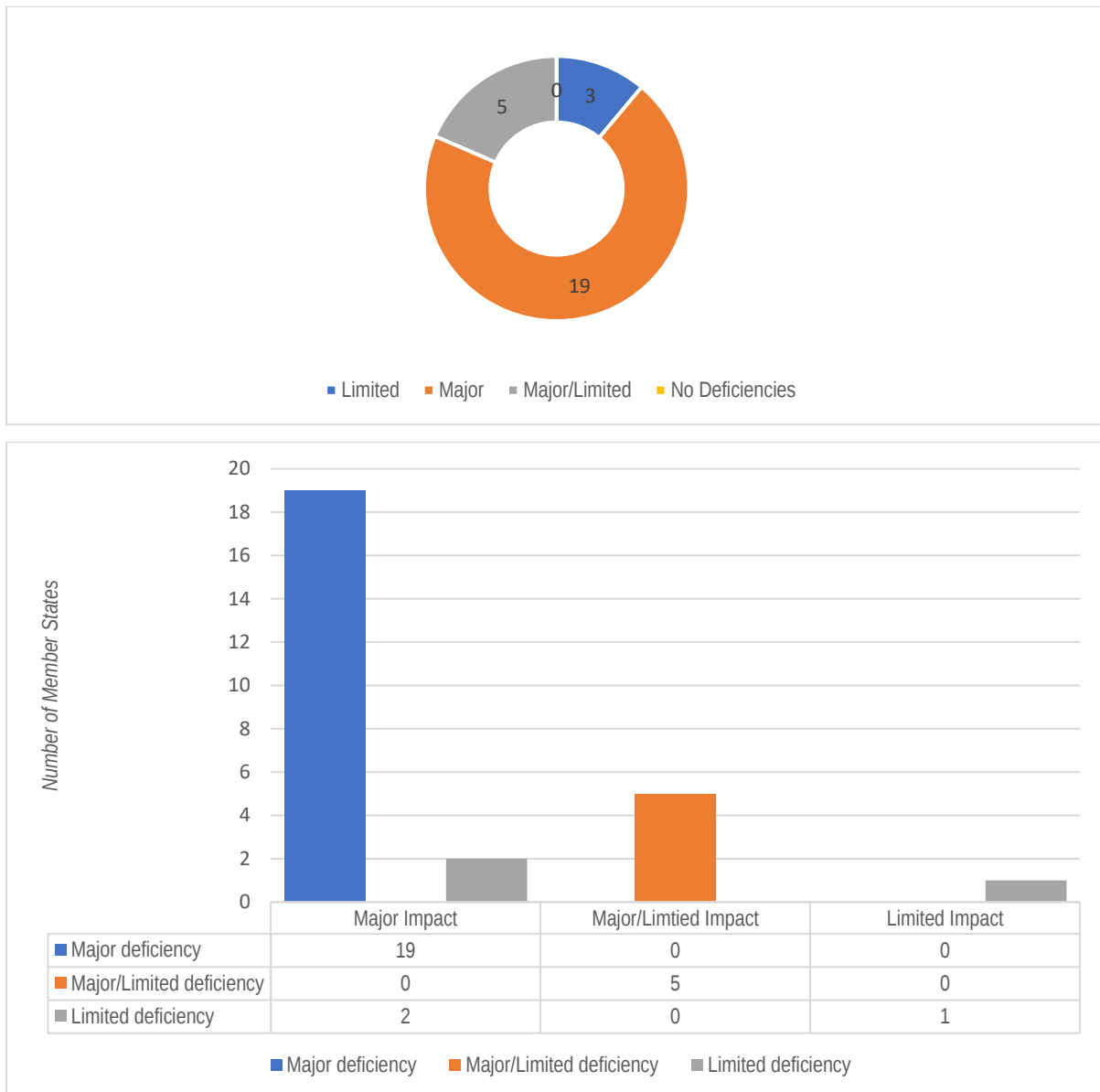


Figure 58 and 59. *Status of implementation and impact of the deficiencies, Article 48 (Supervision)*

266. The majority of the identified deficiencies were rated as having a major impact on the effective implementation of Article 48. In a limited number of cases, Member States received a mixed rating between major and limited, where specific deficiencies related to particular OE sectors. Analysis of those sectors disclosed a further trend where in both assessments involving deficiencies in most or all sectors and those where reference was made to particular sectors, the most frequently identified sectors with supervision deficiencies were the DNFBP and SRB sectors.

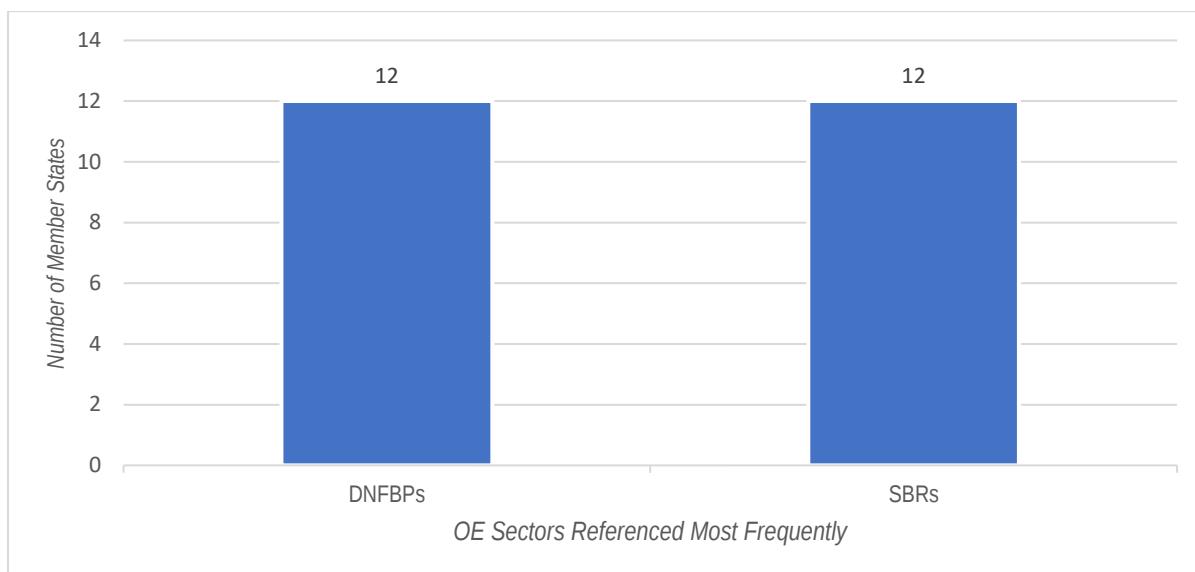


Figure 60. *Additional trends, Article 48 (Supervision)*

267. These two sectors were referenced in 12 assessments. The typologies of shortcomings summarised above were identified equally across both sectors. Most reviewers who found deficiencies noted that these two sectors (save for those who are supervised by an authority which is responsible also for financial institutions such as banks), have not yet progressed in their implementation of risk-based supervision and do not have a complete understanding of the risk profile of OEs for which they are responsible.
268. Overall, historical emphasis upon the banking and credit institution sector has meant that these supervisors have further progressed in their application of a risk-based approach. However, further work is now needed to ensure that risk profiling for both sectors and OEs is applied in a manner that assesses different types of financial institutions based on their particular business models and risks, and not those identified for banks.
269. The scope of supervisory tools used by some supervisors requires further consideration, and in particular, the output received from these measures that assist in understanding the risk profile of OEs, their understanding of how to apply AML/CFT requirements, their understanding of risks at and the effectiveness of their AML/CFT control frameworks.
270. Resourcing impacts upon the effectiveness of supervisory activities and the regulatory responses across all sectors, and does not always reflect the nature, size and complexity of their OEs supervised or the risks related to them.
271. Improvements are needed to align the results of national risk assessments with methodologies applied by some supervisors in their assessment of their respective sectors. Some of the deficiencies identified under national cooperation and coordination with respect to participation in the NRA process are relevant with respect to this finding. However, more work is needed across all supervisors to ensure that national and sectoral risks inform the focus of supervisory activities and the nature of data requested from OEs.
272. The supervision of passporting OEs in some Member States requires greater attention and incorporation into some supervisors' risk profiling of sectors, OEs and overall supervisory planning. Deficiencies in this respect have a corresponding impact upon the effectiveness of international cooperation and coordination efforts, as discussed further below.
273. The absence of formalised data management by some supervisors concerning both supervisory activities planned and undertaken on a risk basis along with methodology to evaluate their effectiveness year on year, prevents most supervisors from leveraging a risk-based approach in order to use their available resource most efficiently.

Sub-theme (b): Sanctions

274. Articles 58 and 59 outline the 4th AMLD's requirements in relation to sanctions. These provisions require that sanctions or measure must be effective, proportionate and dissuasive, competent authorities' sanctioning powers are applied in practice, sanctions are applicable to management and other natural persons where relevant, competent authorities in cross-border cases to ensure the desired results of sanctions, and the appropriate range of sanctions is used.
275. Some of the major factors underlying effective implementation Articles 58 and 59, that were checked in line with the assessment methodology, included the following:
- a) Ability of supervisors to impose appropriate and proportionate sanctions,
 - b) Whether supervisors employed a risk-based approach in their decision to both impose sanctions and the types of sanctions used in response to AML/CFT non-compliance,
 - c) How supervisors evaluate the effectiveness of those sanctions, in terms of their intended use and influence of the obliged entity involved, and
 - d) Utilisation of available sanction powers.

Systemic Issues and Deficiencies

276. Overall, all Member States reviewed were found to have deficiencies related to their effective implementation of some aspects of Articles 58 - 59. Systemic Issues and deficiencies where notable trends were detected were as follows:
- a) Supervisory Measures Preference - Some supervisors predominantly employ informal supervisory measures in response to AML/CFT non-compliance, in lieu of pursuing or applying formal sanction measures.⁴⁷ However, despite the same supervisors advising that this approach was more effective, data concerning AML/CFT compliance by OEs indicates this approach in response to these violations is not having the desired deterrent or preventative effect.
 - b) Effective, proportionate and dissuasive sanctions – Where sanctions were imposed, some supervisors were unable to explain or demonstrate the basis upon which the sanction measure had been chosen or why the measure was seen as proportionate and persuasive in improving OE compliance with AML/CFT requirements. The scope of this deficiency varied between Member States and between the supervisors operating within that State, with some supervisors actively sanctioning OEs but only using fines and other supervisors who never employed sanctions to address non-compliance. Overall, the number of sanctions imposed, relative to the AML/CFT non-compliance detected by some supervisors, appears very low and disproportionate. This is particularly notable in specific OEs sectors, including SRBs and DNFBPs.
 - c) Legal Arrangements – As explained below, there remain impediments for some supervisors that restrict their ability to effectively employ sanctions or restrict the types of measures that are available to them.
 - d) Data and Statistics - Overall, reviewers noted the absence of accurate, complete or in some cases, consistent data provided by some supervisors about the cases in which sanctions were imposed and the types of sanctions chosen. In most cases, there was limited evidence that supervisors are using formalised system to collect this data in order to analyse it and leverage it to assess overall effectiveness of these measures.

⁴⁷ Some Member States emphasising use of supervisory activities due to legal impediments or overall lack of appetite to apply sanctions.

- e) Cross border sanctions – as reviewed also under International Cooperation, deficiencies have been identified with respect to supervisors’ examination and oversight of OEs for which it acts as home/host supervisor. This includes limited evidence that some supervisors acting in this capacity have worked pro-actively to coordinate sanctions and other administrative measures where AML/CFT deficiencies have been identified.⁴⁸

277. The main shortcomings identified by reviewers could be classified into the following typologies:

- a) Effective, proportionate and dissuasive – Absence of or deficiencies in application of sanctions in line with criteria in Articles 58.1 and 59,
- b) Supervisory measures – Failure to or deficiencies in relation to compliance with the requirements of Articles 58.5 and 59,
- c) Process and guidance – Absence or deficiencies in formalised process outlining decision process when selecting or imposing sanctions or guidance for OEs explaining sanction process,
- d) Data and evaluation – Failure or weaknesses in data management concerning decisions to impose sanctions or evaluation of sanctions’ effectiveness, and
- e) Legal arrangements - Failures or deficiencies related to non-compliance with Articles 58.2 and 58.3 and 59.

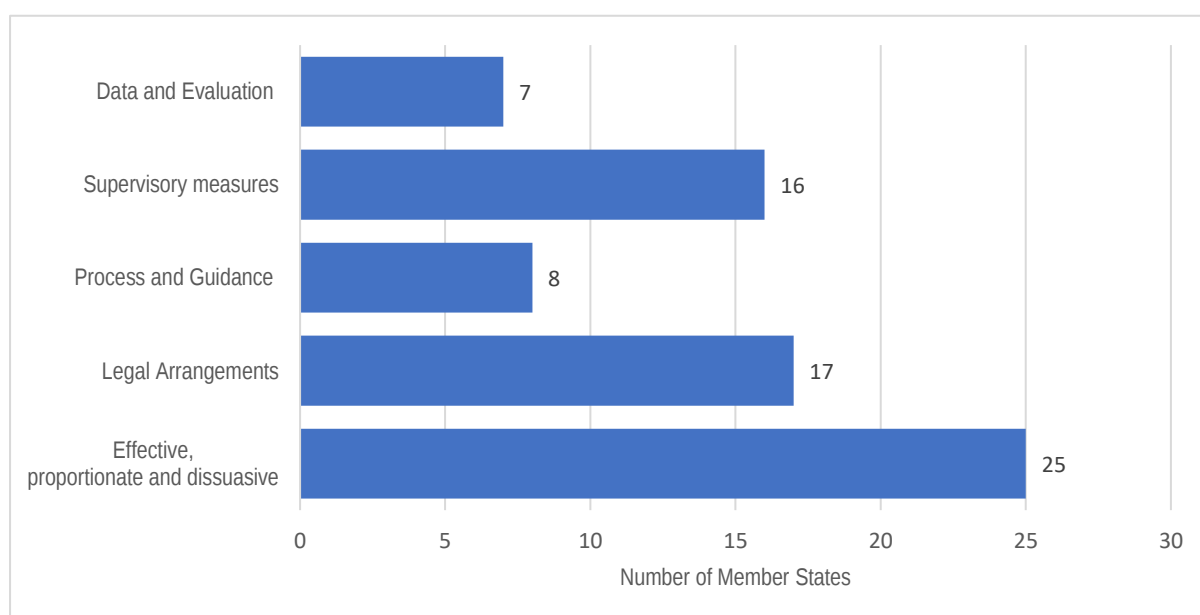


Figure 61. *Typologies of deficiencies, Articles 58-59 (Sanctions)*

278. The most common typology concerns shortcomings in the application of effective, proportionate and dissuasive sanctions. The shortcomings concern some supervisors who:

- a) Had not used their sanction powers in response to AML/CFT deficiencies, no matter how serious they were (most notably SRBs and some DNFBP supervisors),
- b) Did not appear to decide upon the sanction measure chosen based on whether it was proportionate or dissuasive, both in relation to the OE in question or the broader sector in which it operates,

⁴⁸ In some Member States efforts undertaken were found by reviewers to be reactive to supervisory measures undertaken by national supervisors in the Baltic Member States.

- c) Applied limited enforcement measures regarding members of the management bodies of OEs in recent years,
- d) Applied very low amounts of fines and thus for certain sectors were not seen by assessors as sufficiently dissuasive,
- e) Applied a small number of sanctions relative to both the overall size of the supervised OE population and the number of deficiencies related to compliance with AML /CFT requirements,⁴⁹ and
- f) Contributed to an overall knock-on effect caused by low levels of on-site and offsite supervisory activity undertaken by some supervisors in relation to some OE sectors.

Example: The supervisor's application of sanctions is limited to two types: fines and corrective measures, where a broader application may be more effective to enforce the AML/CFT framework in the financial sector in the Member State and increase the dissuasiveness of sanctions.

Another supervisor in the same Member State seems to have imposed fines and no other sanctioning instruments have been used. There is in addition conflicting information provided with regard to the use of these powers. Other authorities do not employ sanctions in practice.

279. The second most common typology was in relation to legal arrangements and practices, found for seventeen (17) Member States reviewed. The shortcomings included:
- a) Lack of comprehensive powers to impose sanctions,
 - b) Lack of powers to impose some of the sanctions described under Article 59,
 - c) National coordination arrangements related to sanctions were ineffective and responsive, requiring that supervisors adopt informal measures in order to progress cases as needed, and
 - d) The complexity and time duration of some processes, may be dissuading supervisors from seeking to impose sanctions.
280. Sixteen (16) of Member States were found to have deficiencies in relation to a clear trend in preferring to employ supervisory measures, in lieu of imposing sanctions. The shortcomings ranged from:
- a) Some supervisors preferred to characterise supervisory measures such as warnings of letters of instructions as quasi-sanction measures,
 - b) Some supervisors were convinced that encouraging voluntary remediation and conducting enhanced supervisory oversight proved a more effective way through which to achieve greater awareness and application of AML /CFT requirements. Despite this, in many instances, data conversely showed in some reviews a notable trend downwards in OE compliance with, certain AML/CFT requirements.
281. Eight (8) Member States of those reviewed were impacted by deficiencies concerning guidance and processes. The shortcomings were as follows:
- a) Failure to provide supervisors with a "road map" or workflow to guide its staff about the required procedure to be followed,
 - b) Lack of clear description of criteria to be satisfied to impose a particular sanction and any time limits involved, or circumstances in which a combination of sanctions may be required given the serious systemic nature of the deviancies involved, and

⁴⁹ Various assessments.

- c) Lack of published guidance explaining the sanction process to the wider OE community.
282. Finally, seven (7) Member States of those reviewed had deficiencies concerning the data and statistics they maintained concerning the cases in which they had proposed sanctions, the types of sanctions imposed, whether the final decision confirmed the imposition of a sanction and if so, what type(s). Various difficulties in obtaining consistent data on the sanctions and the outcome of those were experienced by the teams in an even larger number of assessments. The major shortcomings included:
- a) A notable trend with SRBs experiencing difficulty to obtain statistics to evidence in which instances sanctions were imposed relating specifically to AML/CFT deficiencies versus broader non-compliance with the SRB's professional codes of conduct, and
 - b) Some supervisors, having minimal statistics about their sanctioning activity, especially in the DNFBP sector,
 - c) Limited ability to assess the effectiveness of the remedial measures.

Legal Requirements and practices that impact implementation

283. Legal requirements or practices were identified as affecting the transposition or practical implementation of the measures required under Articles 58 and 59. The main obstacles was identified in seventeen (17) Member States. These related to the following measures:
- a) Multi-Party Format - In some Member States, the legal setup required several parties to be involved in the process by which a decision is made to impose a sanction. The complexity of the process that must be followed and the time needed to complete that process, can have the unintended consequences of deterring supervisors from recommending or pursuing more formalised sanctions. These frameworks also impact the effective implementation of sanctions because the time delay involved in completing the process means that the OE or individual involved, and the broader OE sector, are not aware of the sanction until a considerable amount of time after the non-compliance was first identified. A subset of the above concerns those Member States where one supervisor is responsible for overseeing AML/CFT compliance of an OE sector but must refer a non-compliant OE for sanctioning to a different supervisory body. This also impacts the effective implementation in terms of delaying the sanctioning process and the distancing of consideration of the proposed measure from the overall supervisory context the understood risk profile of the OE, along with relevant sectoral risks sector.
 - b) Maximum fine amount – some Member States' AML/CFT legislation was found not in conformity, in relation to the quantification of fines⁵⁰
 - c) Process Complexity – The administrative legal process that must be applied in some Member States can be complex and time-consuming but must be followed for a sanction to be legally imposed and withstand legal challenge. This results in supervisors seeking to use supervisory measures instead.

Good practices

284. Some of the good practices in certain Member States identified by reviewers regarding the effective implementation of Articles 58 and 59 included:

⁵⁰ In one (1) Member State, a maximum pecuniary sanction is established for the obliged entities. However, none of these amounts has a link to the benefit derived from the breach. The pecuniary sanction for a second category of obliged entities is a minimum of €250 and a maximum of €1,250,000. These amounts have nothing to do with the amount mentioned in the Articles 58 or 59.

- a) Competent authorities apply a range of remediation and enforcement actions (e.g. warnings, fines) that are proportionate to the AML/CFT breaches identified,
- b) Verifiable data is maintained to demonstrate how the supervisors applies a wide range of administrative measures (sanctions), relative to the deficiencies identified and whether they are systemic in nature,
- c) All sanctions are published by main AML/CFT. The full text of the decision issued by the Sanction Commission can be found on its website. As mentioned, the decisions are widely quoted in guidelines and typologies, to ensure the widest reach and to act as a strong deterrent to all obliged entities,
- d) Supervisors based their decision on which measures to apply in line with formalised enforcement policies, and
- e) Targeted sanction activity intended to change compliance behaviour of certain sector has a demonstrable effect in the level of AML/CFT compliance by OEs in that sector.

Example: The AML/CFT supervisor has imposed a variety of sanctions proportionate to the seriousness of the violations identified, including fines on vehicle traders mainly related to CDD and KYC deficiencies. Further sanctions, including fines, were imposed against real estate agents, due to violations of the KYC and CDD requirements and failures to file STRs and cease and desist orders. The supervisor also consults other competent authorities via the relevant committee about the possible criminal prosecution of offenders. Criminal proceedings have been instituted in practice.

Compensatory Measures and Detrimental Factors

285. There were almost no compensatory measures and detrimental factors identified by reviewers in relation to the effective implementation of Articles 58-59. The high number of professionals in each SRB, and the slow rollout of the control environment, combined with the limited number of sanctions, did not yet show dissuasiveness and effectiveness, as a total result of supervision and sanctions.

Conclusions

286. Overall, twenty (20) Member States reviewed were found to have only major deficiencies concerning their effective compliance with Article 58-59 and two (2) Member States were found to have both major and limited deficiencies. Five (5) Member States were found to have limited deficiencies.

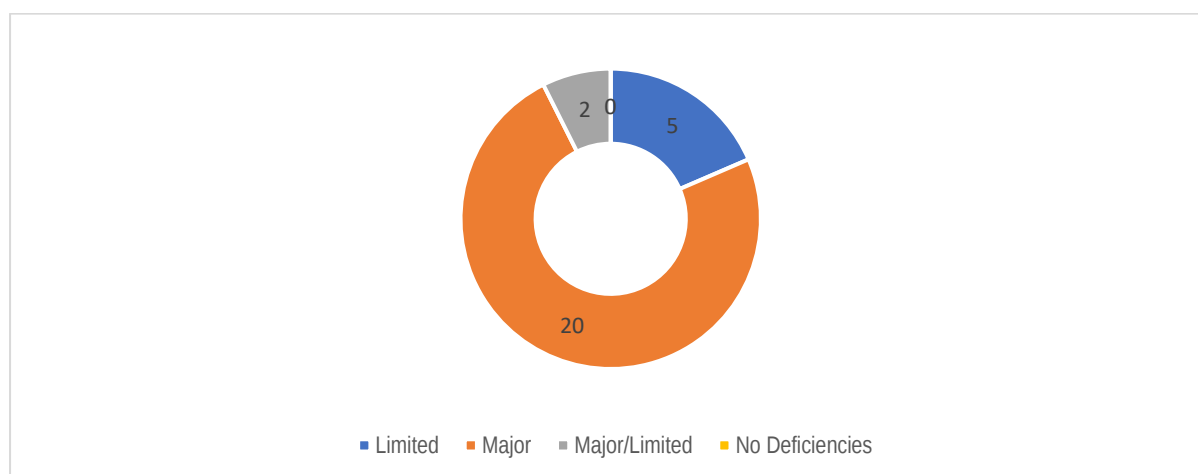


Figure 62. *Status of implementation, Articles 58-59 (Sanctions)*

287. Overall, most deficiencies were found to have a major impact on the effectiveness of those Member States in complying with the requirements of Articles 58-59.

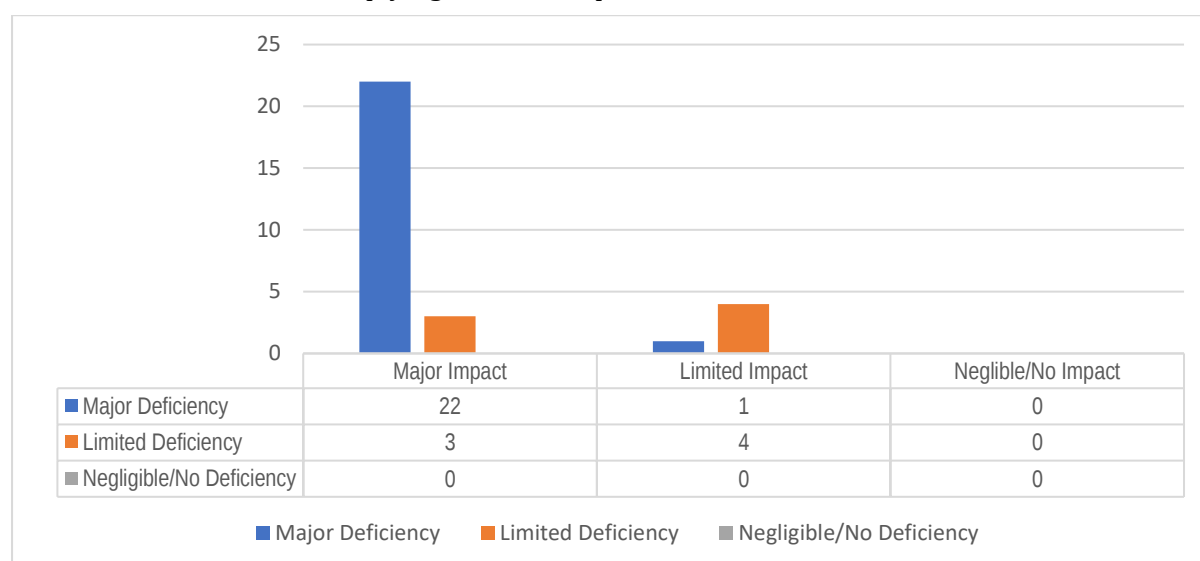


Figure 63. *Deficiencies and impact, Articles 58-59 (Sanctions)*

288. The deficiencies identified are a mix of factors, some of which would require resolution through changes to legislation and rules. Others are directly within the control of AML/CFT supervisors, in terms of establishing clear processes, data collection and in their approach taken towards the use of sanctions in response to OE non-compliance with the AML/CFT requirements.

289. The deficiencies concerning Supervision noted in the previous section may have a knock-on effect. Lack of staff, time and other resources, along with the absence of risk-based planning and data analysis, may mean that some supervisors are not sufficiently equipped to effectively employ sanctions fully as a supervisory tool.

CHAPTER 9. Application of national cooperation and coordination requirements (Article 49) (law enforcement agencies excluded)

Article 49

290. Some of the factors underlying effective implementation of Article 49 which were reviewed in line with the assessment methodology include the following:
- a) Extent of application of formal mechanisms and procedures for coordination and cooperation among the competent authorities for the purpose of NRA.
 - b) Extent of involvement of all competent authorities for the purpose of NRA and the level of contribution of the relevant competent authorities.
 - c) Extent of application of formal mechanisms and procedures for coordination and cooperation among the competent authorities for the purpose of development of policies and procedures to mitigate the risks.
 - d) Extent of involvement of all competent authorities for the purpose of development of policies and activities to mitigate the risks.
 - e) Level of consistency of the cooperation and coordination mechanisms with the prevalent risks.
 - f) The kind of information exchanged by authorities and the extent to which it is used to inform their activities.

Systemic Issues and Deficiencies

291. Most EU Member States have established a formal high-level body which is responsible for taking strategic and policy decisions on AML/CFT, conforming the implementation of State's legal framework consistent with international standards, and in ensuring cooperation and coordination among policy makers and competent authorities in the development and implementation of AML/CFT policies and activities to mitigate risks. However, in some Member States an issue has been identified as to the membership of these bodies/committees which does not extend to include all AML/CFT regulators/supervisors, including SRBs, within their scope. SRBs are generally not found to be the member of AML/CFT related working groups within the Member States. This has resulted into limited exchange of information and discussion with some of these supervisory bodies (discussed in more detail below) on emerging ML/TF risks and trends, which is of crucial importance to ensuring the effective implementation of risk-based supervisory requirements.
292. Limitations have been identified in some Member States on ensuring effective cooperation and coordination among competent authorities especially in identifying and countering TF risks. There is a lack of formal inter-agency coordination mechanism, including lack of specific working groups, focussing on TF risks. The FIU is found not to be a member of any national-level body that analyses the threat of terrorism to the country, and there is also a lack of cooperation with the supervisors and the private sector on TF issues. This highlighted the need to enhance a strategic approach to CFT in some EU Member States.
293. Systematic deficiencies have been identified in most Member States with respect to the establishment and effective implementation of formal policies and activities at national level to combat ML and TF. In some Member States, for instance, there is a complete absence of a formal national AML/CFT strategy and/or action plan, which clearly hinders the effective national cooperation and coordination for AML/CFT purpose. In some Member States where the AML/CFT Strategy has been adopted, it has either not been comprehensive, or not updated as per the findings of the latest NRA, or is based on the NRA which is out of date or insufficient. In some Member States, the actions envisaged in the national action plan, while comprehensive, remain at generic level in several instances, and

there is also a lack of sufficient mechanisms to monitor the effective implementation of the adopted strategy and/or action plan while ensuring adequate level of cooperation and coordination among various competent authorities and supervisory authorities. Even individual strategies at single authority level are not re-assessed or revised considering the findings of NRA in some Member States.

294. Issues relating to comprehensiveness and quality of NRAs in some Member States have been found to affect the effective development and implementation of national AML/CFT strategy and action plan. The NRA in some Member States was identified to be too generic, based on experts' judgement and only, to a limited extent, on quantitative data. This will have an effect on the development of the national policies and action plan and therefore subsequent cooperation, that should theoretically rely on the findings of the NRA. In some Member States, supervisory authorities and OEs considered their NRAs to be unhelpful in developing their understanding of ML/TF specific to their sectors and in developing their sectoral risk assessment or EWRAs. Limited initiatives have also been undertaken to spread awareness of the ML/FT repercussions of wider contextual factors, which could contribute to raising awareness and application of further tailored measures by the obliged entities
295. The extent of involvement of competent authorities, including supervisory authorities, in the NRA process as well as their contribution to the NRA is found to be limited in some Member States. This top-down approach to AML/CFT has resulted into generating issues such as lack of ownership of the NRA findings and conclusions.

Example: In one (1) Member State while several stakeholders were aware of the findings of the various risk assessments (including the NRA), their role in them seems to have been more limited to providing the data, rather than in its active analysis. One authority appeared to be completely unaware that a risk assessment had been carried out in the authority's sector's primary responsibility, despite this assessment is quite recent.

296. In a small number of Member States, the coordination and cooperation between the FIU and various competent authorities involved in the AML/CFT legal framework implementation is mainly based on bilateral MoUs and there is no formal comprehensive mechanism (e.g., working groups or committees) comprising of all competent authorities to share their experiences, best practices and discuss AML/CFT risks and related matters at a national and sectoral level.

Example: In one (1) Member State the FIU has limited engagement with one competent authority which is crucial for effectively implementing the policies and activities to combat ML and TF. In this Member State, the FIU had no authority to send a report directly to Customs Administration or provide feedback on suspicious financial transactions in relation to reporting cross-border cash movements or other suspicion connected with import or export

297. In most Member States, there is limited cooperation among supervisors and their exchange of information with other authorities in the AML/CFT field. Limited or no standing operational level coordination mechanisms are found in most Member States for exchange of information either between supervisors or between the FIU and supervisory bodies. The exchange of information between the FIU and various supervisory bodies is mainly regulated by bilateral MoUs. There is an absence of a dedicated working group in most Member States that focuses on enhancing AML/CFT supervisory activities or the supervisory framework by providing a platform to share best practices or ensure consistency in the interpretation of AML/CFT laws and regulations among supervisors.

298. With the exception of a few main AML/CFT supervisors (e.g., an authority that supervises banks or maybe, a NBF), the extent of cooperation and information exchange between the FIU and other supervisory bodies in most Member States is less developed (mostly informal) and happens only on an occasional basis. Supervisors in some of these Member States do not always cooperate or exchange information with the FIU concerning market entry procedures to verify the “fit and proper” requirements of persons holding senior management positions with licensed entities. Number of infringement reports filed by supervisory authorities to the FIU concerning identified ML/TF related facts is also limited.

Example: In one (1) Member State information sharing for some of the supervisors appeared to be limited to 6-monthly coordination meetings to discuss general sector-specific trends in reporting, in addition to targeted feedback on reporting behaviour to inform on-site inspections. With the exception of the banking sector supervisors, none of the DNFBP supervisors had spontaneously reached out to the FIU in view of obtaining relevant data and documents for use in their sector-specific risk assessments as well as in the framework of fit and proper checks.

299. In some instances where there is an overlap in the respective competence for supervision by the FIU and other supervisor(s) or there is shared responsibilities by a number of authorities over the supervision of a some high-risk OEs (e.g. casinos, real estate, traders in goods, DPMS), there is lack of clarity and effective coordination and cooperation between the supervisory authorities and the FIU, with limited or no joint on-site inspections or lack of sharing of the findings of their respective inspections with each other.
300. Some of the major deficiencies identified in the Member States having an impact on the effective implementation of Article 49 are summarised below:

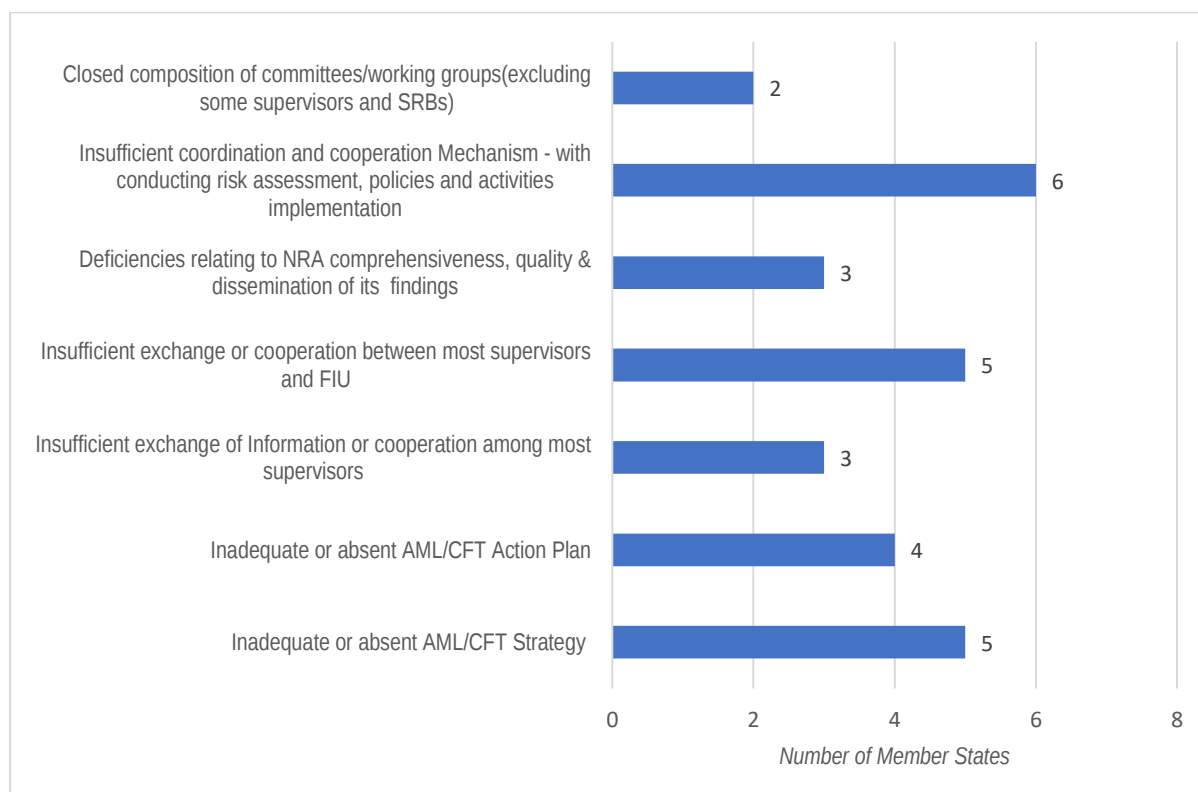


Figure 64. *Typologies of major deficiencies, Article 49 (National cooperation and coordination)*

301. Some of the limited deficiencies that have been identified in the Member States relating to the effective implementation of Article 49 include the following:

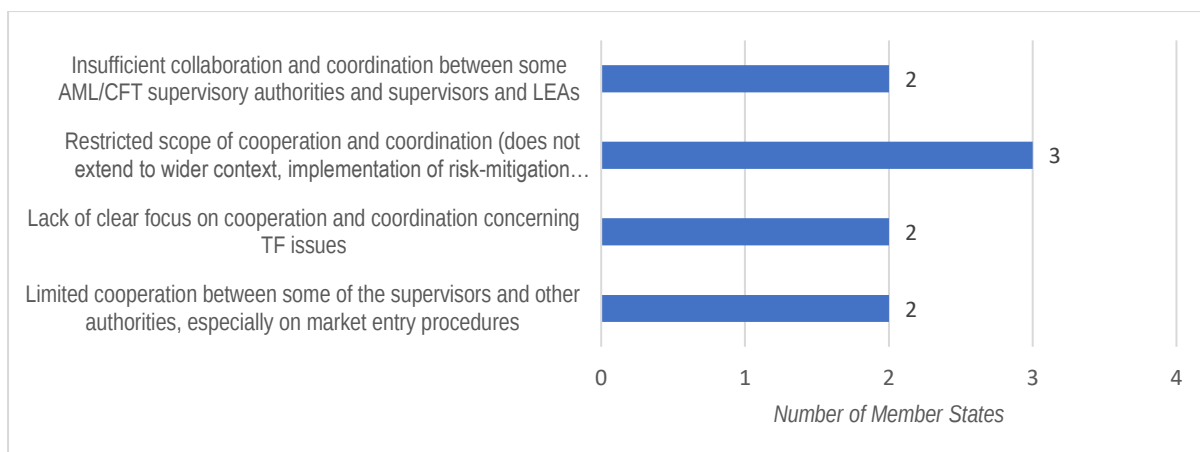


Figure 65. *Typologies of limited deficiencies, Article 49 (National cooperation and coordination)*

Legal requirements and practices that impact implementation

302. Some of the legal requirements and practices identified by the review team that might impact the effective implementation of Article 49 in some of the Member States include:

- a) Lack of or incomplete legal basis for exchange of information among the FIU and supervisors which impacts the effective coordination and cooperation between these bodies.
- b) In most Member States, the framework suffers from a lack of participation and representation of some key stakeholders among the competent authorities in coordination committees or working groups, as well as the engagement with the private sector, to collect feedback, intelligence, and coordinate on AML issues, including in some cases limited participation in the NRA process.

Good practices

303. On coordination and exchange of information between the FIU and the supervisory authorities, a good practice has been observed in some Member States where some supervisory authorities (especially of FIs) closely coordinate and cooperate with the FIU relating to their annual inspection plans and to determine the scope of inspection of specific OEs. In these Member States, some supervisors submit their annual inspection/control plans of the OEs to the FIU, inform the FIU before starting an on-site inspection of each OE, and also report the findings of such assessments, both on-site and off-site, to the FIU, including information on any suspicious activity discovered during such inspections. For one Member States, these alerts shall include all the relevant information and documentation and may trigger a tactical analysis by the FIU. To inform the inspection plans of supervisors, the FIU also provides a letter on areas and sectors particularly exposed to ML/TF risk or possible breaches of AML/CFT requirements by OEs (i.e., delay in STR). The supervisory authorities use this information for the AML/CFT risk profile of the OEs or can trigger a supervisory action.

304. Establishment of a special AML/CFT mechanisms (committees) in a few Member States in which all AML/CFT supervisors participate to develop common supervisory practices on the implementation of AML/CFT requirements, discuss issues arising from FATF and EU requirements which need to be addressed consistently, and enhance the coordination of AML/CFT supervisory activities and training for supervisory staff and staff of supervised institutions. These committees also support frequent contacts and strong co-ordination between the supervisors at the operational level.

305. To ensure the effective development and implementation of policies and activities to combat ML and TF, in some Member States, a formal mechanism to seek targeted inputs from the private sector (also in the form of public-private partnerships/initiatives) has been established, which comprises of representatives of various sectors, including, for instance, the banking, funds, payments, insurance, credit unions, legal and bookmaking sectors. The authorities also use this platform to provide the private sector with information on new and emerging ML/TF risks and trends.

Compensatory Measures and Detrimental Factors

306. While most jurisdictions have made a concerted effort to introduce mechanisms through which to improve their coordination and cooperation at a national level, there remains further room for improvement. It would be fair to say that this particular requirement is currently an activity in which most jurisdictions are either adapting existing cooperation mechanisms or attempting to introduce more effective coordination measures. Deficiencies concerning the national risk assessment create a confluence of risk whereby the omission of certain risks or a lack of buy-in by some sectors and their supervisors, as to the ratings assigned to them, diminishes the effectiveness of the assessment itself. This confluence of risk further influences activities planned to address risks identified in that assessment, where no such measures are included to deal with the areas either not included in the assessment or which have been rated in a manner which supervisors are not in agreement with.

Conclusions (national cooperation and coordination)

307. In ten (10) Member States, major deficiencies have been identified on the effective implementation of Article 49; limited deficiencies were also identified in ten (10) Member State whereas both major and limited deficiencies were identified in three (3) Member States. There were no deficiencies identified in four (4) Member States.

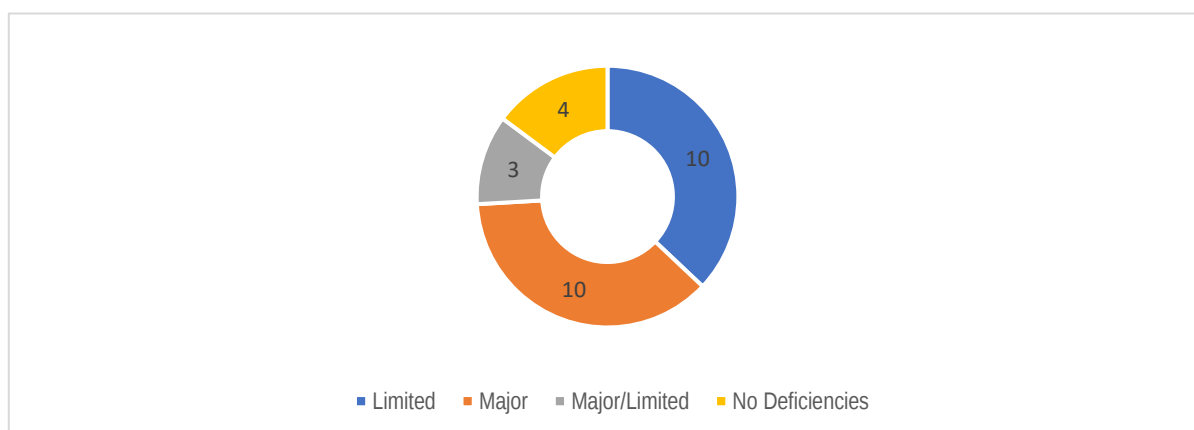


Figure 66. *Status of implementation, Article 49 (National cooperation and coordination)*

308. Most major deficiencies identified in most Member States have been assessed as having a major impact whereas limited deficiencies have been assessed as having primarily limited impact on the effective implementation of the provisions of Article 49 in these Member States.

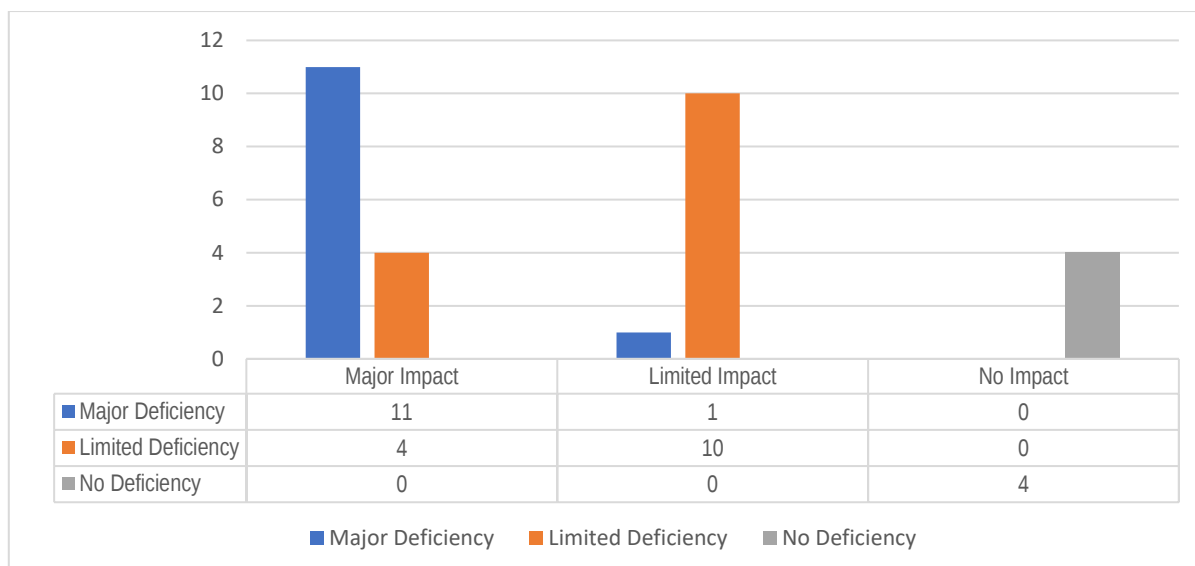


Figure 67. *Deficiencies and impact, Article 49 (National cooperation and coordination)*

309. The Member States have put a lot of effort into ensuring good national coordination and collaboration among the competent authorities. Nonetheless, the formal national AML/CFT strategy and/or action plan still needs to be in place in a few Member States. Further improvement is still required to ensure efficient cooperation and coordination between authorities with regard to the NRA process, to ensure that all relevant authorities (including SRBs) are involved, and to ensure efficient implementation of pertinent activities and/or action plan. In some Member States, effective cooperation and coordination in recognising and combating TF risks needs to be strengthened in particular. Additionally, Member States should endeavour to promote efficient coordination and collaboration between the various supervisory bodies and LEAs.

CHAPTER 10. Application of measures for international cooperation (Articles 52-57, 45.4, 48.4, 48.5 and 58.5)

Sub-theme (a): International cooperation between FIUs

310. Articles 52-57 outline the 4AMLD's requirements in relation international cooperation involving Member State FIUs.
311. Some of the major factors underlying effective implementation of Articles 52-57 that were checked as part of assessment process in line with the assessment methodology, included the following:
- a) Focus on FIU international cooperation, to determine whether it is commensurate to the ML cross-border risks and FT risks faced by the Member State,
 - b) Ability of FIUs to use all available sources of information related to non-residents,
 - c) Whether there are impediments (particularly secrecy) that hinder the provision of information and data to FIU foreign counterparts,
 - d) Timeliness of information exchange, in terms of the additional resources for the responsible bodies that were available to them, and
 - e) Extent to which the availability of resources contributed towards effective cooperation.

Systemic Issues and Deficiencies

312. Overall, approximately just under half of the Member States reviewed were found to have deficiencies related to their effective implementation of Articles 52-57. No systemic issues or deficiencies were identified concerning national law definitions of tax crimes that impede the ability of FIUs to exchange information or provide assistance to another FIU. Issues and deficiencies where notable trends were detected were as follows:
- a) STR Exchange - STRs concerning another Member State are not forwarded promptly FIUs in other Member States.
 - b) Data – concerns that CDD deficiencies, deficiencies in STR reporting and quality of data maintained on BO registers has a knock-on effect as to the reliability of intelligence shared cross-border with other agencies.
 - c) Statistics - Overall failure by FIUs to maintain statistics to evidence extent of information exchange and cooperation activities, including information exchange. The absence of formalised statistics management compromises the FIU's ability to assess the timeliness, resourcing needs and overall effectiveness of its compliance with international cooperation obligations.
313. The main shortcomings identified by reviewers could be classified into the following categories:
- a) Info Exchange - STRs- Failures or weaknesses in processes or practices to ensure that STRs involving another Member State are forwarded promptly to the FIU of that Member State,⁵¹
 - b) Cross-border coordination and cooperation - Failure or weaknesses in leveraging powers and opportunities for information exchange and collaboration for international cooperation, including soliciting feedback from requesting jurisdictions on effectiveness,⁵²

⁵¹ See table for complete list of jurisdictions.

⁵² Ibid

- c) Technology – Failure or operational deficiencies in the technology used to match data with that of other FIUs in an anonymous way to detect subjects of interest and identifying their proceeds and funds,⁵³ and
- d) Data and Statistics – Failure to maintain data or statistics on international cooperation and coordination activities impacting assessment of effective implementation of Article 52-57 requirements; reliance or exchange of data from sources in Member State where issues of accuracy and completeness were present.⁵⁴

Example: In a Member State a very large number of SARs and other disclosures were forwarded to the [FIU] by foreign FIUs totalling almost around 26 thousand for 2020. All incoming SARs and disclosures are reported to have involved [Member State] nationals, companies, bank accounts or identified other linkages with the financial or other sectors of [Member State]. These linkages should have had their counter-connecting points in the country, which could be identified by the obliged entities and/or the [FIU] analyses thus generating a much bigger number of SARs and other disclosures forwarded to foreign FIUs (instead of around 1,000 SARs forwarded to foreign counterparts).

314. Among the thirteen (13) Member States where deficiencies were identified, the shortcomings predominantly related to failures or weakness in relation to cross border coordination and cooperation and exchange of STRs concerning other Member States.

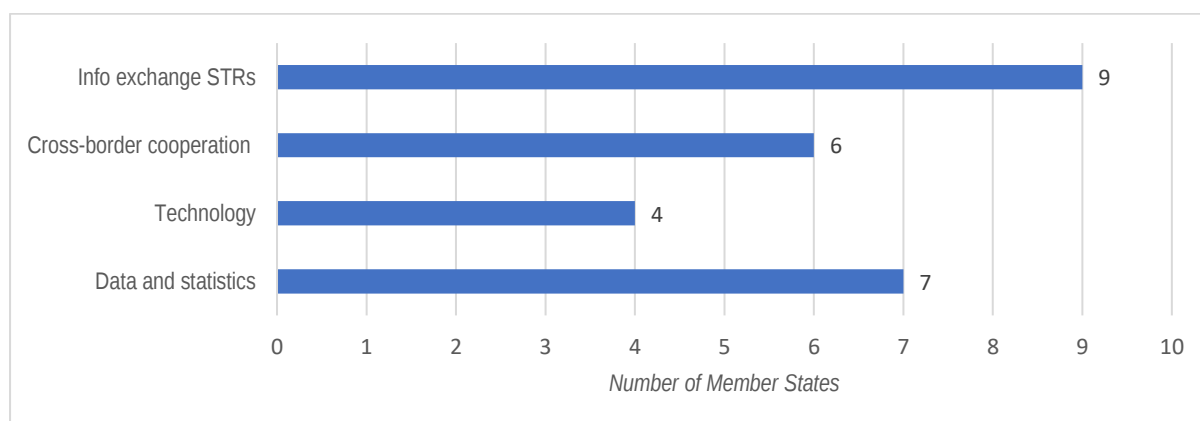


Figure 68. *Typologies of deficiencies, Articles 52-57 (International cooperation - FIU)*

315. The majority of shortcomings related to the exchange of STRs concerning other Member States and cross-border coordination and cooperation. The timeliness and completeness of information exchange concerning SARs with other Member States was a major related deficiency contributing to this large number of Member States with lower effectiveness of the cross-border coordination and cooperation. Shortcomings related to data and statistics were cited by reviewers as problematic in seven (7) Member States, in relation to both the tracking of numbers of requests sent and received, feedback from other Member States, time taken to respond to requests and overall failure to maintain such data as a basis against which to measure FIU's overall effectiveness in fulfilling these requirements. Technology deficiencies were identified in four (4) reviews. While these appeared to be compensated through other measures employed by FIUs, the risk of delays and inaccuracy were identified as areas that would require monitoring and future mitigation, particularly considering the high number of countries with deficiencies related to the forwarding of STRs concerning other Member States.

⁵³ Ibid

⁵⁴ Ibid

Legal Requirements and practices that impact implementation

316. During some reviews, assessors determined that certain requirements under Articles 52-57, had either not been fully transposed or were non-conforming with the Articles' full requirements by a small percentage of Member States. A very limited number of these (i.e. two (2) Member States) were determined as potentially having a major impact on the effective implementation these requirements. These included the following findings:
- a) National legal framework results in FIU having only indirect access to law enforcement information necessary to respond to international requests for information. This can also involve a requirement that judicial approval first be obtained before information can be shared outside of the Member State. The resulting impact, at a practical level, are delays both in the FIU accessing and analysing the data from OEs and to its timely dissemination to other Member States, and
 - b) Lack of clarity within national AML/CFT legislation as a to the FIU's ability to delay a transaction, at the request of a foreign FIU. This was seen by reviewers as a detrimental factor, particularly in view of the significant extent of information exchange with other FIUs related to fraud.
317. In remaining cases, reviewers determined these deficiencies had a negligible effect on overall effectiveness.

Good practices

318. Overall, approximately 52% of Member States reviewed were found to have negligible deficiencies in relation to the effectiveness of their implementation of Articles 52-57. Some of the good practices identified by reviewers in some Member States regarding the effective implementation of Articles 52-57's requirements included the following:
- a) The FIU has a broad legal basis for international cooperation and proactively and constructively interacts with its foreign counterparts by exchanging information on ML associated predicate offences and FT,
 - b) The FIU maintains detailed statistics on the cross-border disseminations to other EU Member States of suspicious transaction reports concerning those Member States,
 - c) The FIU actively uses ma3tch technology, having a total of 10 different filters, two of them being general filters, which contain the majority of natural persons and legal persons from the FIU database, and remaining sub-filters focused on specific types of crime or subjects from STRs disseminated to the Police. All filters are shared with other EU FIUs. Most filters are updated annually, at the end of the year.
 - d) The FIU is proactive in sharing a large number of suspicious transaction reports (STRs) with foreign counterparts on a spontaneous basis.

Example: In recent years, the FIU has intensified its cooperation with foreign counterparts, which has led to a steady increase in both incoming and outgoing requests as well as spontaneous disseminations, which reflects the level of cross-border ML/FT risks to which the Member State is exposed. This cooperation is conducted without regard to the organisational character of the counterpart FIU. No impediments to exchanging information or providing assistance to other FIUs due to differences in the legal definitions of tax crimes under national law have been identified.

Compensatory Measures and Detrimental Factors

319. There were very limited compensatory measures and detrimental factors identified by reviewers in relation to the effective implementation of Articles 52-57. Legal requirement deficiencies which could affect the ability of the FIU in this area, tended to be compensated

for in the practice (i.e. FIUs found other ways to ensure that cross-border cooperation and exchange of information takes place, as required).

320. A notable detrimental factor identified by reviewers was in relation to data quality, and in particular the data maintained on one (1) Member State’s national BO register. It was concluded that reliance of the FIU on the registry’s information available could have a negative impact on the quality of information provided in the scope of international cooperation.

Conclusion

321. Only one (1) Member State was found to have major deficiencies with a major impact on the effectiveness of their implementation of these requirements.

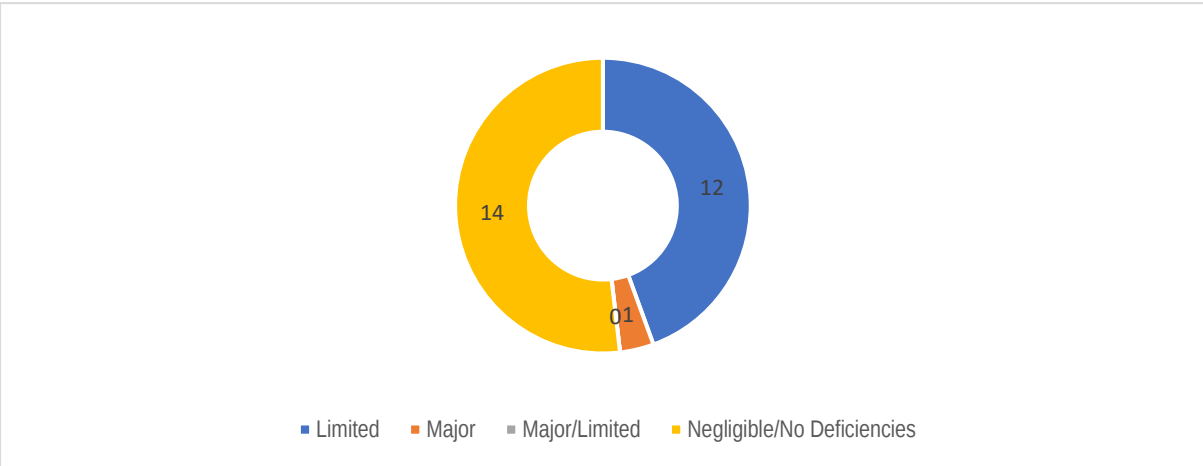


Figure 69. Status of implementation, Articles 52-57 (International cooperation - FIU)

322. In total, thirteen (13) Member States in which deficiencies were identified in the effective implementation of Articles 52-57, the majority of which were rating as being limited with limited impact on overall effectiveness. Ten (10) Member States were rated as having only limited deficiencies having a limited impact on effectiveness.

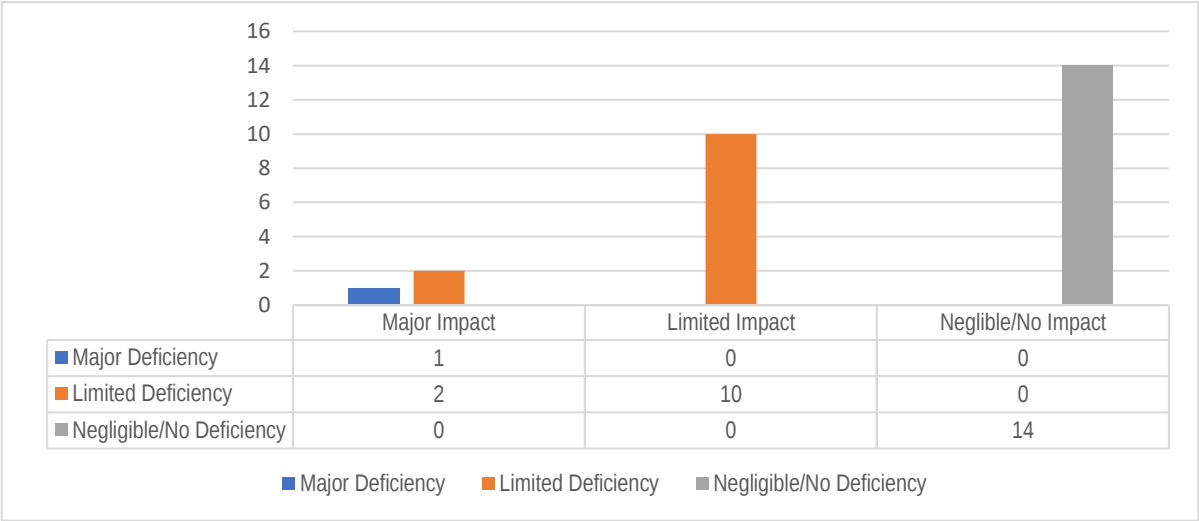


Figure 70. Deficiencies and impact, Articles 52-57 (International cooperation - FIU)

Sub-theme (b): International cooperation between supervisors

323. Articles 45.4, 48.4, 48.5 and 58.5 outline the 4th AMLD's requirements in relation international cooperation between supervisors. These requirements include the following obligations:
- a) Notification obligations where a third country's law does not permit the implementation of group wide AML/CFT policies and procedures,
 - b) Member States shall ensure that competent authorities of the Member State in which the obliged entity operates establishments supervise that those establishments respect the national provisions of that Member State transposing this Directive.
 - c) Competent authorities supervise OEs established in their Member State (host supervision) for compliance with national AML/CFT requirements. In the case of e-money institutions and payment service providers, this can include the taking of measures to address serious AML/CFT failings that require immediate remedies of a temporary nature, including with the assistance of or in cooperation with the competent authorities of the OEs home Member State (home supervisor),
 - d) Where a Member State acts as host supervisor, it may require that payment service providers appoint a central point of contact (CPP) to ensure compliance with AML/CFT rules and to facilitate supervision including providing documents and information upon request, and
 - e) Competent authorities exercise their power to impose administrative sanctions and other measures directly and cooperate closely to ensure that administrative sanctions and other measures produce the desired results and coordinate their actions when dealing with cross-border cases.
324. In a number of assessments, reviewers considered compliance with some of the requirements under (b), (c) and (d) within the context of overall supervisory activities. The typologies concerning supervision and sanctions where reference is made to home/host supervisors are relevant here but are not repeated in this section of the report.

Systemic Issues and Deficiencies

325. Deficiencies were identified in twenty (20) Member States. Overall, no systemic issues or deficiencies were identified with respect to Member States' effective compliance with the requirements of Article 45.4 or with respect to the use of CCP (discussed further in Supervision above). Systemic issues and deficiencies where notable trends were detected were as follows:
- a) Limited cooperation, if any, with competent cross-border authorities (home/host supervision) to ensure monitoring based on adequate understanding of the risks related to establishments operating in the Member State, and
 - b) No arrangements or practices employed by some AML/CFT supervisors for cooperation with competent authorities from other Member States and other jurisdictions.
326. These findings were mainly applicable to those supervisors overseeing OEs with branches and subsidiaries operating outside of the Member State (i.e. banks, credit institutions, payment service providers etc.). In some instances, the deficiencies related only to a specific subsector of OEs (e.g. gaming industry OEs or certain other categories of DNFBPs).
327. The main shortcomings identified by reviewers could be classified into the following three typologies:
- a) Cross-border coordination and cooperation- Failure or weaknesses in leveraging powers and opportunities for information exchange and collaboration for

international cooperation, including sanctioning of host and home supervised OEs,

- b) Cross Border exams and oversight - Failure or weaknesses in leveraging powers and opportunities to facilitate cross border examinations, oversight and coordinated sanctions and administrative measures, and
- c) Legal Arrangements – restrictions related to national legislation or incorrect interpretation of powers leading to restriction international cooperation or coordination.

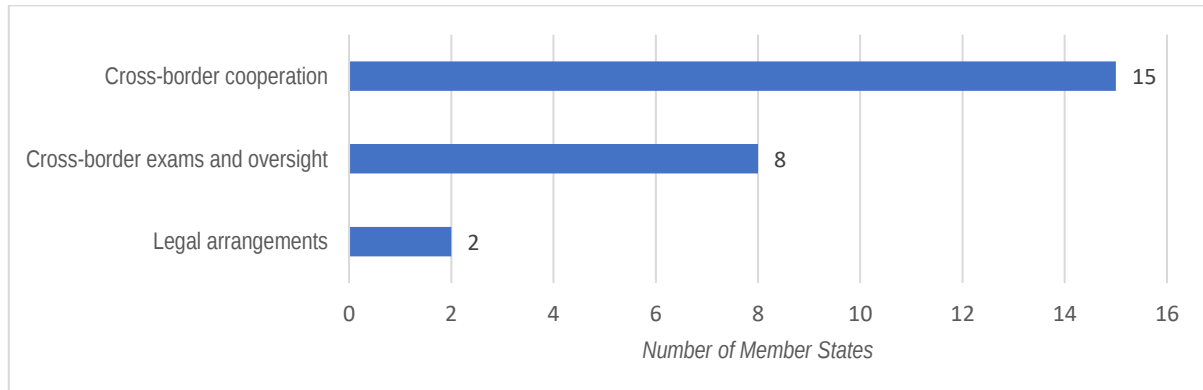


Figure 71. *Typologies of deficiencies (International cooperation - supervision)*

328. The majority of shortcomings related to cross-border coordination and cooperation. These deficiencies were primarily related to failures to leverage possible cooperation opportunities, and less so of a reluctance or resistance on the part of competent authorities to do so.
329. The second most common shortcoming was cross-border exams and oversight. The most frequent deficiency for all Member States under this typology was the failure to pro-actively undertake coordinated supervision of OEs as home or host supervisor. Some reviewers noted a lack of cooperation with competent authorities in other jurisdictions to ensure that monitoring as host or home supervisor was taking place in cooperation with the counter with establishments in more than one jurisdiction was based on an adequate understanding of risk. Further findings included lack of discussions concerning international cooperation as part of prudential supervisory colleges related to AML and /CFT or overall uncertainty as to how or even whether certain supervisors were using the mechanisms provided for under Articles 48.4 and 48.5 to leverage the possibilities of international cooperation.
330. This deficiency appears to be compounded to some extent by supervisory deficiencies related to ensuring that passporting OEs are effectively supervised for compliance with national AML/CFT legislation. In more than one review, some AML/CFT supervisors, in particular those responsible for investment and payment services OEs, expressed the view that they were limited in their ability to supervise OEs which had passported into their jurisdiction, for AML//CFT purposes and limited their supervisory oversight of these entities. In another Member State where a banking institution has been the subject of extensive adverse media information, assessors found that efforts to interact with other supervisors in relation to an OE's branches, was primarily reactive and only occurred once serious deficiencies in AML compliance were reported by host supervisors.
331. Several Member States had not always undertaken joint examinations of operations in other Member States. While there appeared to be a trend in several Member States to conduct joint visits or examinations of banking or credit institutions, similar efforts were not found in relation to other forms of OEs. Note was also made of the failure to have evidence showing coordination of sanctioning activity with cross-border supervisors. This

may also be the result of a knock-on effect arising from the low level of sanctioning in certain sectors, where in supervisors suggested voluntary encouragement of remediation or a lack of responsibility for addressing a cross-border non-compliance as host supervisor, was provided by way of explanation for the low numbers.

Legal Requirements and practices that impact implementation

332. Limited legal requirements or practices were identified by reviewers as affecting the transposition or practical implementation of the measures required under these Articles. The main obstacle was identified in three (3) Member States. These related to the following measures:
- a) Main AML/CFT supervisor does not have the power to fine the branches or establishments of overseas entities operating in the Member State, and
 - b) Restrictions on the sharing and use of information at national level may impede supervisors' abilities to react quickly to international cases.

Good practices

333. Good practices in certain Member States identified by reviewers regarding the effective implementation of international cooperation by supervisors included the extensive cooperation of by one (1) Member State with foreign counterparts both as a home and a host supervisor, resulting in the application of administrative and other measures, including termination of activities, regarding establishments operating in a host Member State.

Example: A Member State is very conscious of its need to be a model for international cooperation in all cases where their entities are engaged, in EU and in third countries. This is reflected in the willingness to spend resources and effort on multilateral and bilateral MoUs, colleges and all forms of bilateral spontaneous engagement with other supervisors or counterparts. This effort is to be commended, and the plans to expand and systematise cooperation further go in the right direction for the future.

Compensatory Measures and Detrimental Factors

334. There were almost no compensatory measures and detrimental factors identified by reviewers in relation to the effective implementation of Articles 45.4, 48.4, 48.5 and 58.5. The one exception was that in one (1) Member State, reviewers determined limitations concerning cross-border cooperation and coordination supervision of OE passporting into the Member State would be compensated by the introduction of AML/CFT colleges to specifically include such OEs.

Conclusion

335. Of the twenty (20) Member States in which deficiencies were identified in the effective implementation of international cooperation in supervision, five (5) were assessed as having major deficiencies with major impact, three (3) having limited deficiencies but with major impact, 1 having major deficiencies with limited impact and eleven (11) of limited deficiencies and impact.

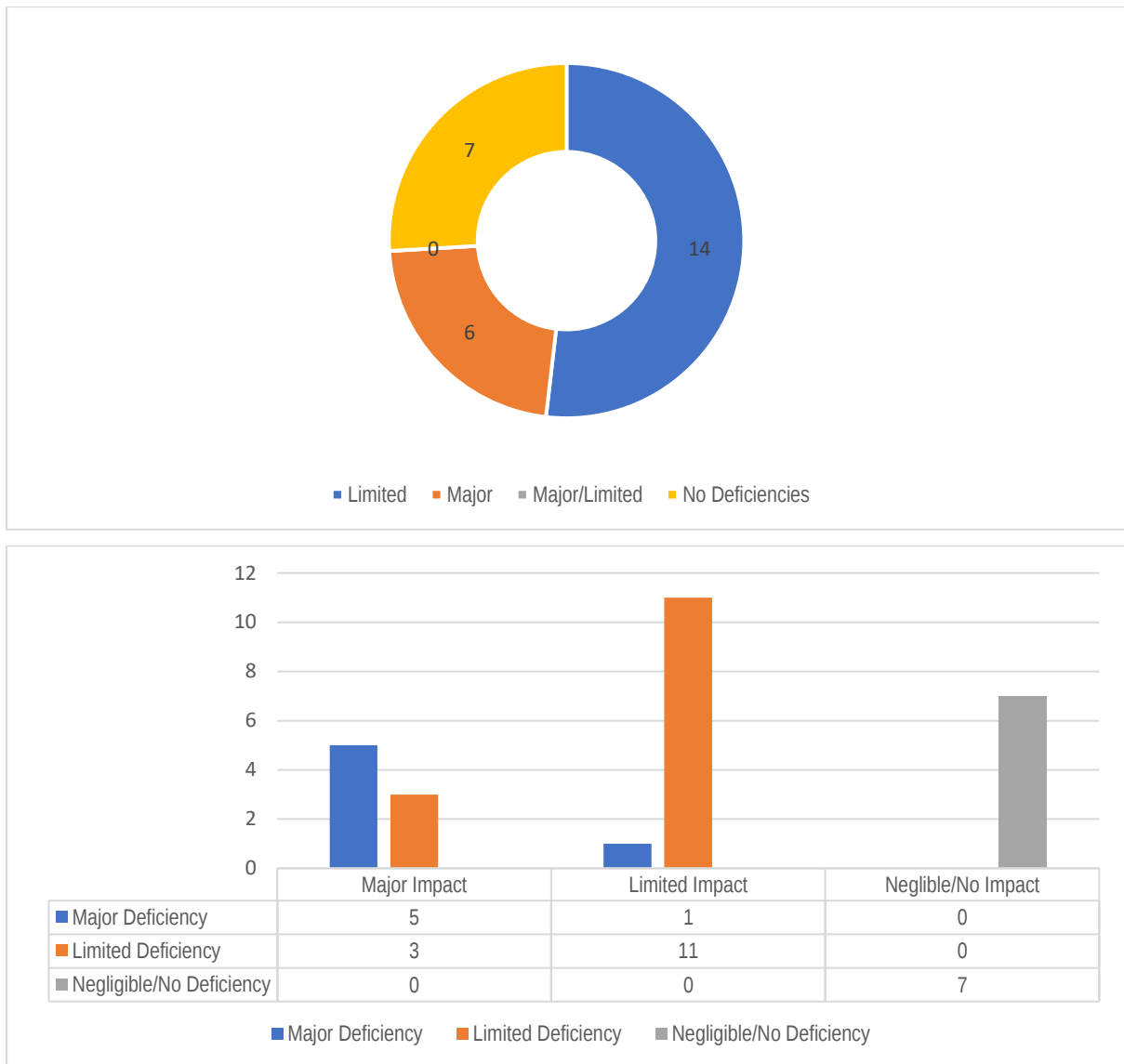


Figure 72 and 73. Status of implementation and impact (International cooperation - supervision)

336. Although several Member States reviewed showed proactive and positive initiative towards fulfilling their obligations concerning international cooperation, more work is needed in this area. As no legal impediments were identified by any Member States as a reason for or preventing international cooperation, it is within the purview of these jurisdictions to proactively develop constructive information exchange and effective supervisory practises with their counterparts in both other Member States and further abroad. This is particularly crucial in relation to those OEs for whom competent authorities act as host/home supervisor.