

EBF response to European Commission's Proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849

- **General remarks**

The European Banking Federation (EBF) is fully supportive of the Commission's overarching objective to address the ineffectiveness of the current EU AML framework. Bearing in mind the necessary lead-time and efforts to get the AML Package adopted and implemented, this momentum is a unique opportunity to improve the framework and cannot be missed.

The EBF believes that there is a crucial need for a paradigm shift. It should consist in moving away from the existing legalistic and bureaucratic tick-the-box approach which generates massive flows of irrelevant data that Financial Intelligence Units cannot exploit in an efficient manner. However, since risk assessment criteria and the concepts of suspicion and unusual transactions are still missing clarity, obliged entities may continue to adopt a defensive approach in the filing of suspicious activities reports (SARs). The status quo about Beneficial Owner registers is also disappointing: UBO registers need to be not just harmonised and interlinked, but also significantly strengthened.

In our view, it is also absolutely key to develop an intelligence-led approach with the aim to effectively mitigate money laundering risks and detect financial crime. Some of the steps proposed in the package are going in the right direction, notably by addressing the existing supervisory fragmentation. The EBF particularly welcomes that the AMLD introduces standards for risk-based supervision and harmonises the Financial Intelligence Unit function. However, the package does not address some fundamental dimensions of information sharing which must leverage on new technologies and involve all actors of the AML framework, including law enforcement and public private partnerships.

- **Subject-matter, scope and definitions (Art. 1-6)**

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- The European Banking Federation (EBF) supports the objectives of the European Commission's Anti-Money Laundering and Countering the Financing of Terrorism Package which aims to strengthen the fight against financial crime in Europe. We hence recognise the importance of establishing an effective and cooperative AML/CFT environment which requires the combined efforts of obliged entities, competent authorities, FIUs, law enforcement and AMLA. The new AML/CFT Directive (AMLD6) should provide the appropriate institutional framework for optimising the efforts of all parties involved.

- **Risk assessments (Art. 7-9)**
 - The EBF maintains that inconsistent implementation of risk-sensitive measures under the previous AMLDs has weakened the RBA and has undermined the flexibility and discretion of obliged entities to follow their data and develop high-quality intelligence. This includes inconsistent national approaches to define higher risk categories set out in the current AMLD, in some cases extending the scope of risk-sensitive measures and restricting obliged entities' flexibility in how to apply these measures according to the varied risks of particular cases. Therefore, a standard set of risk-sensitive measures is needed which Member States would be able to supplement based on the national risks identified.
 - The EBF believes the Supranational Risk Assessment (SNRA) should be adapted with a view to reforming the current "one-size-fits-all" approach. First, clear and consistent criteria for risk assessment are required. Regulatory harmonisation of key definitions used for risk assessment processes is needed and should take into account the 2017 EBA Guidelines for AML/CFT Risk Factors. Clear and consistent criteria and weighting for risk assessment are key to an effective AML/CFT regime, to ensure that expert resources are focused on truly higher risk situations and that customer burdens are minimised for the majority of routine cases. Complementary guidance on particular risk factors and sectoral issues should be provided in this framework.
 - Since ML/TF risks are changing quickly and significantly and taking into account the requirements for obliged entities to carry out and keep up-to-date risk assessments as per the proposed Article 8 of the AMLR, the Supranational and National Risk Assessments need to be updated in a more timely manner to reflect these changes. The EBF therefore suggests that both the Supranational Risk Assessment (SNRA) and the National Risk Assessments (NRAs) be updated more frequently (e.g. every two years), instead of the period of at least every four years set out in the proposed Article 7 and Article 9 of the AMLD, in order to provide obliged entities with updated information in support of their general risk assessments. The methodology of the SNRA and the NRA for assessing ML/TF risks should also be harmonised in order to permit a better implementation by obliged entities.
 - The EBF welcomes that the proposed AMLD6 integrates the changes brought about by the recent revisions of the FATF Recommendations in relation to assessment and mitigation of risks of evasion of targeted financial sanctions. Since the associated measures are linked in some sections to "proliferation financing" and are not in others, clarification should be provided to ensure consistency throughout the Directive.

- **Registers / mechanisms of BO, bank accounts and real estate (Art. 10-16)**

- The EBF welcomes the idea of a Commission Implementing Act on the format for the submission of UBO Registers. We believe that such approach should include a standard for ultimate beneficial owners' (UBO) registers in terms of data requirements, access conditions and the necessary legal powers to ensure data quality, including verification by registry authorities, standards for risk-based supervision of Trust and Company Service Providers and a fair balance with data protection concerns. This would also be in line with FATF Recommendation 24 whereby countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Despite the establishment of these registers, the collection of data to identify the UBOs has led in most Member States to a further increase in the workload and effort which has not improved transparency and does not ensure timely access to adequate, accurate and current information. This is due to the lack of commitment in many Member States to set up these registers consistently in terms of technologies, data requirements and access conditions and with a high level of data quality and supervision of obliged entities providing trust and company formation services. The practical impacts include barriers to accessing key data for the fight against financial crime. We also believe that the process of interconnecting these registries should include harmonising access by making it free of charge or setting a low ceiling for administrative charges, to be reviewed periodically with the aim of phasing any charges over time. It is also due to the discrepancy reporting requirements and the discussion between obliged entities and the register administrations about inaccuracies or inconsistencies. The registers need to be not just harmonised and interlinked, but also significantly strengthened. The authorities responsible should collect the necessary data independently and with the legal powers and competence to verify the accuracy of information and to impose sanctions in the event of lack of support. Obligated entities should be allowed to rely on the data collected and checked in this way.
- The EBF maintains that the proposal should ensure that Member States are responsible for ensuring that the centralised automated mechanisms referred to in Article 14 are interlinked. If that burden is put on obliged entities, that would require extensive rebuilding of current IT infrastructures to adapt to a new technical European standard.
- The EBF further welcomes the Commission proposal to harmonise the availability of beneficial ownership information via Real Estate Registers. Given the significant abuse of real estate in the laundering of the proceeds of corruption and other crimes, we believe that obliged entities should be granted access to this information for purposes of AML/CFT compliance. We also believe that such an approach should include basic standards in terms of data requirements, access conditions and the necessary legal powers to ensure data quality, including standards for risk-based supervision of Estate Agents.
- **FIUs (Art. 17-28)**
 - The EBF believes that enhanced coordination of Financial Intelligence Units (FIUs) proposed in the package will create synergies, facilitating the work of law enforcement and competent authorities. The provision on the use of state-of-the-art technologies by FIUs is hence a welcome one.
 - The EBF welcomes the proposed Article 21(1) whereby FIUs would prepare yearly reports containing information on trends and typologies identified.

- When filing a SAR to their national FIUs, it is vital for banks to receive feedback on their reporting. Such two-fold information streams would facilitate the efforts of banks to identify more clearly, prevent and mitigate the risks of ML/TF, while also decreasing the need for further unnecessary data processing. The EBF hence supports the provision of Article 21(2) whereby Member States shall ensure that FIUs provide obliged entities, at least once per year, with feedback on the submitted SARs, which would cover at least the quality of the information provided, the timeliness of reporting, the description of the suspicion and the documentation provided at submission stage. It should be noted, however, that for large banks, receiving feedback only once per year remains insufficient. This standard should evolve taking into account the activities of existing public-private partnerships (PPPs) and the upcoming Commission guidance on PPPs in the AML/CFT domain. FIUs's feedback should also have legal value so that it could be used in potential disputes. The effective implementation of this provision would be of great importance to the improvement of the effectiveness of the AML/CFT framework.
 - The EBF also welcomes the legislative efforts aimed at fostering a secure information exchange between FIUs within FIU.net (Article 23), which would be hosted by AMLA in accordance with Article 37 of the AMLA regulation.
 - The EBF cautions that information provided by obliged entities must be subject to sufficient safeguards, on the part of the responsible authority in order to preserve the safety of employees dealing with the information.
- **AML Supervision (Art. 29-37)**
 - AML Supervisors tend to supervise obliged entities only through the prism of compliance. The extent of supervisory actions should be commensurate to the ML/TF risks, and not determined solely on the grounds of nature and/or size of the enterprise. We welcome the proposal for standards on risk-based supervision, including explicit reference to the need for a degree of risk tolerance based on a professional evaluation of the entity's risk-based approach. Moreover, the EBF acknowledges the importance of cooperation between supervisors, together with law enforcement, competent authorities and obliged entities. Therefore, achieving coherence in the work of national supervisors and law enforcement authorities is of great importance. This process could be facilitated by EU-wide guidelines and recommendations issued by the new Anti-Money Laundering Authority (AMLA).
- **Cooperation (Art. 45-52)**
 - European banks are committed to the fight against money laundering and terrorism financing. There is a need to support effective cross-border cooperation, information sharing and public-private partnerships. Public and private stakeholders must continue to build trust and work hand in hand.