EBF_045275
17 November 2021

EBF response to European Commission's Proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

- **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. Some of the steps proposed in the package are going in the right direction, notably by addressing the existing regulatory fragmentation. However, while the standardisation of key customer identity information for KYC purposes and beneficial owner information is a positive move, the approach is too prescriptive, and the discretion which is left to Member States to adopt additional measures may lead to gold-plating, reintroducing fragmentation. The package also maintains a rule-based approach in many instances where flexibility is required. The Regulation is for example far too prescriptive when it comes to risk-sensitive measures. In terms of internal controls and procedures, the two-tier governance structure, involving a compliance manager and a compliance officer, is also too rigid and may conflict with structures in place in many Member States and entities.

In our view, it is absolutely key to develop an intelligence-led approach with the aim to effectively mitigate money laundering risks and detect financial crime. 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 and Scope, including List of Obliged Entities (Art. 1-6)**

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
EU Transparency Register / ID number: 4722660838-23

www.ebf.eu

- The existing AML regulatory fragmentation has so far complicated the work of regulators, law enforcement and multinational banking Groups which cannot easily put in place EU-wide AML programmes. Even worse, this fragmentation enables criminals to exploit regulatory weaknesses and inconsistencies in one jurisdiction to launder funds and move these around financial markets. Given the current regulatory fragmentation, we support the Commission's decision to adopt an AML Regulation. We believe that harmonisation should further include definitions of additional foundational terms (e.g. 'residency') as well as procedural requirements (e.g. 'beneficial ownership', 'business relationship', 'payment accounts').

- In light of the above, we also note that the Regulation often refers to secondary legislation (adopted by AMLA or by the Commission) for detailing certain provisions. This is in part understandable due to the complexity of the AML Regulation and the necessity to avoid excessive prescription that could undermine the risk-based approach. On the other hand, this setting may prevent obliged entities from gaining a clear understanding of all the impacts of the proposed Regulation. On some specific issues below, we suggest a more balanced approach, either to avoid excessive prescription or to support a clear and consistent understanding across obliged entities.

- The EBF believes that extending the scope of AML/CFT obligations to crypto service providers and crypto-to-crypto transactions will contribute to a better level-playing field. However, alignment should be ensured with the broader regulatory framework that applies to newly listed obliged entities. For example, with reference to crowdfunding, there is a need for better alignment between Article 5 of Regulation (UE) 2020/1503 and the proposed provisions on KYC. The EBF urges the Commission not to go forward with the suggestion to remove traders in goods from the list of obliged entities. We fear that such legislative action is motivated by traders´ failure to understand and properly apply the legal requirements, and by the lack of adequate supervision; it does not seem to be substantiated by a proper risk assessment of their activities. Although the Regulation introduces a limit on cash payments, the money laundering risk associated with this sector is non-negligible, and for certain types of traders, e.g., traders of luxury goods and jewellery, it is high.

- The EBF welcomes addressing international financial sanctions in the new EU AML/CFT legislative package in line with the FATF Recommendations 6 and 7 and the FATF Guidance on Proliferation Financing Risk Assessment and Mitigation. The EBF asks, however, for clarification regarding the connection between AML/CFT and the "evasion of targeted financial sanctions". The scope of "targeted financial sanctions" is unclear – in some sections it is linked to "proliferation financing", but not everywhere. It is further insufficiently clear what is meant by "measures should also be put in place to mitigate any risk of non-implementation or evasion of targeted financial sanctions" (recital 7). We note that FATF Recommendation 1 refers "strictly and only to" targeted financial sanctions under United Nations Security Council (UNSC) resolutions relating to the proliferation of weapons of mass destruction and its financing (i.e. UNSC regimes for Iran and the Democratic People's Republic of Korea). We would therefore recommend clarification of whether this is the intended scope of the Regulation's use of "targeted financial sanctions". Clarification is also needed as to what extent this will be covered by the

mandate of AMLA. We believe that an impact assessment should be performed to cover those issues. Guidelines/FAQs by the EU Commission would also be useful to ensure a coherent understanding of the application of the new EU rules by the European Commission and, at the same time, to avoid diverging interpretations and application of the new legislation in the domestic regulatory frameworks.

- The EBF believes that it is necessary to define a consistent EU framework on restrictive measures through a process of harmonisation, given that at present EU Member States apply different rules, notably as regards asset freezing listing.

- **Internal Policies, Controls and Procedures of Obliged Entities (Art. 7-14)**
  - The EBF maintains that the appointment of one executive member of the board of directors or its equivalent governing body as responsible for the respect of measures to ensure compliance with the regulation cannot challenge the collective suitability of the members of the management body. In one-tier systems, company law conceives the management body (board of directors) as one unique and inseparable body through which both management and supervisory functions are performed. All the members of the board imperatively perform all the functions assigned to it as they are all, collectively, part of the decision-making process, and they all have the same rights and responsibilities; they are all under the same liability regime, because they act as one single collegial body. The allocation of different responsibilities to different board members is thus inadequate for one-tier systems, given that no efficient or real separation of responsibilities can be implemented where company law conceives the board as one unique and inseparable body through which all functions are performed. The wording in Article 9(1) should thus be adapted to avoid the allocation of "responsibilities of measures to ensure compliance with the Regulation" to a member of the board of directors, whether an executive or a non-executive.
  - The EBF highlights that Article 9 needs to be formulated in such a way as to make it also applicable in practice in Members States that do not use the described governance structure. In furtherance of this aim, it should be possible to place the "compliance manager" at senior management level for all types of obliged entities and not only for those which do not have a governing body or executive members in their board of directors. We hence propose (i) replacing the term "one executive member of their board of directors or, if there is no board, of its equivalent governing body" used in Article 9 with "management body"; and (ii) incorporating the flexibility necessary for the responsibility to rest with a member of the senior management, given that they are the persons/team responsible for the day-to-day management of the institution and, consequently, the persons fit for taking on direct responsibilities for the different key matters that comprise the management of the institution (including AML/CTF compliance responsibilities), in order to address the issues stemming from the different governance structures across the EU.
  - It also seems that the wording in the Article 9 is not aligned with EBA/GL/2021/05 and the three Lines of Defence model described therein. The independence of internal control functions and their accountability to the management body regarding, particularly, issues such as AML/CFT risk and compliance were a major

breakthrough in the 2017 revision of the framework and have driven major organisational reforms within institutions. It is thus unclear what is the rationale behind a new accountability regime whereby the responsibility would lie with a director instead of with the corresponding internal control head, accountable directly to the management body as a whole (as mandated by the Guidelines). Article 9 should hence be changed accordingly to address these issues. Moreover, it is important to note that the functions envisaged in Article 9, such as implementing policies, controls and procedures, seem to be of rather operational character and do not fall within the realm of management body functions. It is therefore important to clarify that the compliance manager may be a senior manager (i.e. internal control head) and that they may either assume the role of compliance officer (as per Article 9(6)) or delegate the day-to-day operation of AML/CFT to a compliance officer who would assist with the performance of the compliance manager's duties.

- In reference to the above, clarification is needed as regards the compliance manager, in particular their position in the organisation, and their relation to the compliance officer. It is critical that any direct regime on this critical topic does not imply any disruption or disproportionate effect to the obliged entities in terms of imposing strict requirements on internal governance and controls that might disproportionately reduce the flexibility for obliged entities.
- With reference to employees' assessment (Article 11(1)), it is important to set up this assessment only for key AML/CFT functions in order to focus on the relevant AML/CFT risks. Clarification is also needed on the type of assessment to be carried out to ascertain the presence of the indicated requirements. Specifically, it should be clarified by whom the assessment should be conducted and with what periodicity. Clarification is further needed on what actions should be taken in case one or more of the requirements in paragraph 1 are not met.

- **Customer Due Diligence (Art. 15-41)**
  - The EBF maintains that the risk-based approach (RBA) is key to the underlying purpose of the AML/CFT regime. The vast majority of business relationships are low or medium risk, which can be mitigated by standard Customer Due Diligence (CDD) measures to confirm customer identity. However, obliged entities also have an important role in helping law enforcement to identify the very small minority of criminal relationships and transactions, through identifying, investigating and reporting on suspicious cases. This requires effective risk assessment, based on a clear understanding of the customer's identity and the business relationship, and the targeted application of additional-risk sensitive measures, including the use of sophisticated technological approaches and specialist teams of analysts. However, inconsistent implementation of risk-sensitive measures under the 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 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.

- The EBF welcomes as a positive development the proposed standardisation of key customer identity information that obliged entities have to collect and verify pursuant to Article 18. This would potentially reduce fragmentation and legal uncertainty and could also enable multinational banking groups to develop more consistent group-wide policies and processes. However, additional information and risk-variables required for beneficial owners may impair the risk-based approach.
- The new identification measures maintain a differentiation according to reduced, normal and increased risk, which remains overly complex. In particular, regarding Enhanced Due Diligence (EDD) measures, Article 16 should be revised in order to avoid the application of these measures in case of "increased "risk of money laundering or terrorist financing" that does not automatically mean "high risk". The EDD measures should be applied only in cases of high-risk profiles and in line with FATF Recommendation 10.
- Furthermore, we caution that the proposed mandatory KYC requirements in Article 18 are very detailed and will be further detailed by AMLA. In combination with Article 17, there is a risk that this will result in a larger number of denied customers and transactions, and terminations of existing customer relationships, which in turn could lead to financial exclusion. Therefore, it is crucial to find an adequate balance between those objectives. We further ask the Commission to provide additional guidance regarding the termination of customer relationships that include products which either fall under strong consumer protective legislation, or otherwise could have severe economic or social impact for customers and society, such as mortgages. The EBF thus calls for the newly introduced KYC requirements as set out in Article 18 to apply only to new customers, without affecting with retrospective effect the existing customer relationships in order to avoid disruptive remediation exercises of the complete customer portfolio that can divert resources away from financial crime prevention. We consider that new requirements should be applied to existing customers on a more targeted approach, such as through event triggered CDD reviews.
- The uniform standard of key customer identity information would potentially also facilitate the use of electronic identification, which in turn may improve the customer onboarding process. However, where electronic identification is not being used, we do not believe that obliged firms should be required to obtain and verify a copy of the customer's identity card, passport or equivalent in all cases, and in addition to other information from reliable and independent sources, as set out in Article 18(4). We also caution that the timeline for implementing the new framework seems to be challenging, considering that the reliable and independent sources of information that may be used to verify the identification data of natural and legal persons for the purposes of Article 18(4) will be contained in AMLA RTS (Article 22).
- The EBF calls for a complementary guidance on particular risk factors and sectoral issues to be provided (possibly in the context of the Supranational Risk Assessment).
- The EBF welcomes the differentiation of High Risk Third Countries into the three categories of Articles 23, 24 and 25, with risk-based requirements applying to the different circumstances of each country. However, we consider that the introduction of three new categories, each with their own mandatory requirements, is overly complex and not clearly supporting a more effective risk-based approach. The EBF therefore calls for clarification of the criteria to apply in order to select those third countries in which the relevant law impedes compliance with the requirements laid

down in this Regulation. Overall, the draft text remains to a heavy extent based on the existing system as provided for in the AMLD4, which has shown deficiencies and conflates different types of high-risk and higher risk countries (countries under increased monitoring) under the same inflexible treatment. FATF distinguishes high-risk countries requiring enhanced due diligence measures in all cases (i.e. Iran and DPRK) from higher-risk countries under increased monitoring due to identified strategic deficiencies in their AML/CFT regimes (e.g. most recently Jordan, Mali and Turkey), with an explicit FATF clarification on higher-risk countries that it "does not call for the application of enhanced due diligence measures to be applied to these jurisdictions, but encourages its members and all jurisdictions to take into account the information presented below in their risk analysis". We consider that obliged entities should be allowed to take a risk-based approach to higher-risk countries under increased monitoring (Article 24), including through consideration of FATF summaries of the specific strategic deficiencies in each case and other risk assessment information and typologies provided by national authorities and in future by the AMLA. Obliged entities should also be provided with clear guidance on which enhanced due diligence measures should be adopted for the additional category of countries identified according to Article 25, again with supportive guidance on the specific risks and weaknesses to support a risk-based approach. As noted above for newly introduced KYC requirements, we consider that new EDD measures should not be applied retrospectively to the entire relevant customer portfolio, but instead should be applied in a more targeted approach, such as event-triggered CDD reviews.

- In relation to ongoing monitoring, the five-year deadline for updating customer information does not seem to be a proportionate measure. This measure should be replaced by an event-triggered CDD monitoring requirement allowing greater proportionality to risk and reduce unnecessary effort and customer friction. An event-triggered CDD review should be carefully targeted to where there are specific indications of a material change in the risk profile of the business relationship (e.g. existing customer seeking a significantly different or higher risk product, material change in the activity of the account).
- The proposed Regulation allows Member States (Article 28(5)) to require obliged entities to apply specific EDD in cases of higher risk identified at national level. The EBF cautions that this may potentially lead to gold-plating by certain Member States and hence ultimately defeat the purpose of achieving harmonisation.
- The EBF welcomes the provisions of Articles 38 - 41 which allow for performance of CDD by third parties. In a group it should nonetheless be possible to rely on other group entities for all measures performed, and not only those referred to in Article 16(1), points (a), (b) and (c), under the condition that the entities are subject to the same group-wide policies. Under the same condition, outsourcing within a group should be possible for tasks listed in Article 40(2). We believe that the prohibitions on outsourcing of specific customer risk assessment and onboarding are unnecessary and disproportionate, given broader requirements for proper oversight and risk-based escalations for senior management approvals of high-risk cases.
- We welcome the provisions of Article 38(2) which allow for reliance on obliged entities that are regulated and supervised by equivalent AML/CFT regimes. We believe that this approach should be extended to Articles 28(6) and 38(4), which provide exemptions from EDD for branches of financial Groups operating in high-risk third countries and future RTS on geographical risk indicators. These exemptions are currently limited to those financial groups that are regulated and

supervised by Member States (i.e. branches of financial groups from equivalent regimes are not exempt).

- Moreover, outsourcing restrictions must be explicit and clearly defined in the Regulation without the need for anticipating an AMLA guidance to be developed. The prohibition in Article 38(4) to outsource to natural or legal persons residing or established in third countries identified pursuant to Section 2 of Chapter 3 of the AMLR seems disproportionate given that obliged entities remain fully liable for the conduct of these persons' actions, taking into account that the latter also apply the measures and procedures adopted by the obliged entity. This is a critical operational aspect. Obliged entities legitimately expect that directly applicable rules already cover all the nuclear elements of the regulatory standards. However, this would not be the case if their decisions or actions in accordance with the Regulation need to be reviewed pursuant AMLA Guidance or national guidance.

- **Beneficial Ownership Transparency (Art. 42-49)**

  - The EBF welcomes the standardisation of data to be collected by legal entities for establishing beneficial ownership (BO) as set out in Article 44. However, the data to be collected by obliged entities on beneficial owners (Article 18(2)) is too broad, as well as the way of verifying the identity of beneficial owners (Article 18(4)). As noted above, we believe that some of the proposed standardisation of approaches to beneficial ownership requires further clarification to distinguish routine checks from risk-based measures. Moreover, in the event where this requirement is imposed to obliged entities, the 14-calendar day requirement for obtaining and updating beneficial ownership information seems to be too short, especially in cases of complex corporate set-ups.

  - With regard to the definition and to the identification of beneficial owners for corporate and other legal entities, the EBF cautions that the proposed changes seem to introduce a mix of criteria compared to the regulation in force. This reading seems to be confirmed by recital 66 whereby "(…)The determination of control through an ownership interest is necessary but not sufficient and it does not exhaust the necessary checks to determine the beneficial owners". This approach could generate fragmentation among banks in determining the BO and runs against the approach used in many countries where there is a rigid hierarchy of the criteria defined for investigating the BO. The definition of control via other means is therefore too broad and potentially burdensome and should be applied on an exceptional basis (e.g. where there is doubt about whether a person with a controlling ownership interest in a legal person is the ultimate beneficial owner[1]).

  - We do not consider that it is proportionate to require firms to check in all cases for customer control through links with family members of managers or directors/those owning or controlling the corporate entity (Article 42(1)(d)). We do not consider that this should be mandated in a regulation, but, if such an obligation were introduced, obliged entities should be allowed on an exceptional and risk-based basis to request from customers a formal declaration so that where such declaration is false, the customer should be held liable.

  - The EBF further sees as a positive development the obligation enshrined in Article 45 for legal entities holding information on beneficial ownership to provide the data to obliged entities where the obliged entities are taking customer due diligence measures. We believe that legal entities should also be obliged to provide updates

[1] FATF Rec 24 consultation, Glossary definition of Beneficial Owner note 3.

on changes to their beneficial ownership to those obliged entities that they have a business relationship with. Furthermore, if consulting the BO register remains obligatory, there is a need to consider this sufficient for the intermediaries in order to comply with the obligation to ascertain the BO.

- Nevertheless, the registers on beneficial ownership 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. Obliged entities should be allowed to rely on the data collected and checked in this way.
- The provision by obliged entities of further documentation and information on beneficial ownership to the responsible authorities should be subject to sufficient safeguards from a secrecy (including bank secrecy) perspective, and the information including the reporting of discrepancies should be subject to secrecy obligations for the responsible authority in relation to third parties including the customer for whom the discrepancies have been reported.

- **Reporting Obligations (Art. 50-54)**
  - The EBF has repeatedly stressed the issue with the large volume of suspicious activity reports (SARs) FIUs receive. On their part, FIUs find it difficult to select the data, with an added value, out of all the volume of the data they receive, especially given the high percentage of false positives. This issue stems from the existing rule-based approach which results in inefficiency and, ultimately, deviation from the overall objective of detecting suspicious criminal activity. In this context, the obligation for FIUs to provide feedback to obliged entities on the SARs received as set out in the proposed AMLD6 is a welcome development. However, the definition of 'suspicion' in the proposed AMLR remains broad and may continue to lead to a significant flow of SARs towards FIUs.
  - The EBF also cautions that practical difficulties may arise in providing information in response to requests for information from FIUs under Article 50(1) within the set deadline of 5 days, or 24 hours in urgent cases. Such rigid temporal requirements may also impede prioritisation of cases when several requests from FIUs are received. We thus propose amending the draft Article 50(1) so that obliged entities are allowed to respond to such requests as soon as possible based on the reasonable efforts required to provide the requested information.
  - The EBF stresses that the maintenance of the requirement of "same transaction, same customer" in order to enable information sharing between two obliged entities will severely hamper the ability to combat financial crime. The EBF considers that "same transaction", or "same customer" should be sufficient.
  - Moreover, the newly introduced obligation in the proposed Article 59(4)(b) for credit institutions to report payments or deposits above the cash limit of 10 000 euro to the FIU would place additional burdens for both banks and FIUs. This reporting obligation does not appear to be risk-based and further runs against the ambition to reduce the volume of low-value reporting to FIUs. While this provision is aimed solely at credit institutions, we emphasise that there are other transactions that may run money laundering or financing of terrorism risks, including the ones

in high-value goods which to a large extent have been excluded from the scope of the Regulation.

- **Data protection (Art. 55-57)**
  - The EBF maintains that the protection of personal data when abiding by the obligations and expectations vested on obliged entities in the fight against AML/CFT is important. Applying the GDPR principles to the processing of personal data in the context of AML/CFT gives rise to unclarities. A great number of them could be addressed in the AMLR. Proper balance between the GDPR and the purpose of the AML/CFT legislation should be struck. It is crucial to ensure that the package is followed by appropriate actions to enable information sharing, effectively fostering Public-Private Partnerships and supporting the wider use of machine learning and AI technologies in the AML/CFT space, including the setting up of data sharing utilities, while taking adequately into account the principles of the GDPR.
  - In each legislative proposal comprising the AML/CFT package, personal data protection provisions have been included, but without real consistency between them and, crucially, without explicitly addressing the fact that under AML/CFT rules, financial entities are obliged to monitor customers' transactions, collect specific data/information, retain this data, and apply a risk-based approach. The scope of the AML obligations must be perfectly defined with respect to personal data to ensure the lawfulness of processing under data protection regulations. The two rules must be fully compatible and leave no room for doubt. For instance, international data transfers are only mentioned in the Regulation on information accompanying transfer of funds and certain crypto asset whereas the topic of data transfers is a global one that should also be addressed in all legal instruments on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The EBF hence suggests the integration of a specific chapter addressing personal data protection aspects for the whole AML/CFT package.
  - A positive development is the recognition of the importance of information exchange between obliged entities in the AML/CFT context and the provision of Article 13(1) whereby group-wide policies, controls and procedures shall also include controls and procedures for sharing information within the group for AML/CFT purposes. Nevertheless, to improve the effectiveness of the framework, information sharing should not be limited to intra-group sharing, but also extend to obliged entities outside the group. The currently proposed approach would in practical terms be comparatively more beneficial for large banking groups operating across numerous jurisdictions, whereas smaller banks would be unable to access data allowing them to see a more complete picture of money laundering and financing of terrorism risks they face. Although mentioned in Recital 84, information sharing between obliged entities is not handled in the Regulation. Furthermore, to be fully aligned with the principle of data minimisation enshrined in the GDPR, information sharing should not be seen as an obligation for obliged entities but should be based on their assessment on the *need* for the exchange of such information.

- Furthermore, the Regulation fails to provide a legal basis for the exchange of data between obliged entities, competent authorities and law enforcement, which may impede public-private cooperation in the AML/CFT space. We emphasise that the financial sector is heavily regulated and meets numerous requirements in terms of safeguards for the processing of personal data, including ensuring confidentiality and that relevant data is only used for intended AML/CFT purposes. A clear legal basis would avoid potential discrepancies between EU countries and ensure a consistent interpretation and application of the regulations, also providing certainty that the processing is aligned with the principles of necessity and proportionality enshrined in the GDPR. The Single Rulebook aims at achieving a more harmonised AML/CFT landscape across the EU. This is complemented by the expected Commission guidance on PPPs in the AML/CFT domain. In order to succeed with the fulfilment of this goal, harmonisation should also extend to data protection authorities through the introduction of overarching EU guidance. In any case, it is essential for financial institutions to have concrete guidelines from EU and international financial authorities allowing for sufficient flexibility with regards to the application of the risk-based approach, as well as to keep their AML/CFT processes up to date.
- The EBF thus proposes the inclusion of additional clauses which would ease data transfers outside the EU for AML/CFT purposes; to include provisions enabling financial institutions to use solely automated decision-making including profiling pursuant to Article 22 of the GDPR and in accordance with the requirements and safeguards laid down therein, if useful for them to ensure compliance with AML/CFT obligations; provisions and safeguards on the use of data to train algorithms and specific reference to the principles of purpose limitation and compatibility of purposes as per the GDPR; share information on AML/CFT risks and specific cases under properly established Public-Private Partnerships; provisions on safeguards to mitigate risks that may appear in case of use of algorithms aiding transaction monitoring, for example on the level of transparency to regulators and to individuals; be more precise regarding the data sharing especially within entities that are part of an international group, and its legal ground; recognise that exploring the use of new technologies or initiatives before implementing them structurally may constitute a legitimate interest of financial institutions; as well as make reference to adequate security measures regarding data sharing.
- The EBF believes that further progress is needed with regards to providing for a clause to enable the safe transfer of personal data when required for AML/CFT purposes.
- The EBF welcomes the proposed Article 55, which provides greater legal certainty with regards to processing of special categories of personal data and personal data relating to criminal convictions and offences.
- As regards recording of financial transactions within an ongoing business relationship, the provisions of the proposed Article 56 have largely remained unchanged in comparison to those of the AMLD4 whereby obliged entities are required to retain data on those financial transactions also for a period of at least 5 years after the end of the business relationship, whereas FATF Recommendation 11 requires the retention of financial transactions data for at least 5 years after the

transactions occurred for the purposes of complying with information requests from competent authorities. As noted by the European Data Protection Board, this often may extend over several decennia"[2]. It is therefore important that uniformity in establishing retention periods is sought and coherence with other local law retention periods is observed, including clarifying that obliged entities can continue to hold data beyond the period prescribed by EU AML rules where they have a legitimate justification to do so under the GDPR.

- It should be noted that financial Institutions are not the only stakeholders that need to ensure the accuracy of data. Providers of data are playing a specific and important role. When acting as data controllers, those players should also be responsible for the accuracy of data under the GDPR. That could substantially improve the quality of data as these providers are working with a great number of financial Institutions. It is important that the same rules and obligations apply equally to all actors.

- **Measures to Mitigate the Risks Deriving from Anonymous Instruments**
  - The EBF welcomes the prohibition of anonymous crypto wallets as proposed in Article 58. However, clarity must be provided to financial institutions acting as acquirers since currently there is no guidance available on the prepaid card requirements and how an acquirer would know if a card is compliant with EU requirements if issued outside of the EU.

[2] See EDPB statement on the protection of personal data processed in relation with the prevention of money laundering and terrorist financing of 15 December 2020 at https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_20201215_aml_actionplan_en.pdf.