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EBF Position on Proposal for a Regulation Establishing a new AML/CFT Authority

Key EBF messages on the Proposal:

On Establishment and Legal Status (Articles 1 - 4)

- 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. The set-up of a new EU AML Authority (AMLA) is a crucial component of this package. It is hence of great importance that it brings true value to the effective fight against financial crime and does not simply introduce another layer of ex-post reporting.

On Tasks and Powers of the Authority (Articles 5 - 11), Direct Supervision of Selected Financial Sector Obligated Entities (Article 12 – 27) and Indirect Supervision of Non-Selected Obligated Entities and Non-Financial Obligated Entities (Articles 28-32)

- The EBF stresses that the criteria for the selection of entities subject to AMLA supervision are a key element of effective European supervision. These criteria should identify entities that present a significant AML/CFT risk to the European financial sector. To this end, we believe that the methodology for selecting these entities should be based on the net AML/CFT risk presented by an entity and not the inherent risk.
- However, we caution that the approach to selection of supervised entities as set out in the Proposal's Articles 12 and 13 currently focuses on the size of obliged entities given that only entities operating in at least seven different Member States might be selected. The EBF maintains that the largest entities are not necessarily the ones carrying the largest AML/CFT risk. We therefore call for a stronger focus on the risk-based approach to the selection of obliged entities, rather than concentrating on their size.

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- In order to provide for a level playing field and in furtherance of the risk-based approach, the EBF calls for the scope of the AMLA to also be extended to include the non-financial sector.
- The EBF appreciates the European Commission's intention to promote the use of new technologies by assigning AMLA with the responsibility to make available to FIUs IT and artificial intelligence services and tools for secure information sharing pursuant to Article 5 (5)(e). We caution, however, that this approach should take into account the different resources, capacity and maturity of FIUs across Member States, while also respecting the pertinent personal data protection regulations. In its proposed form, it presupposes that the regulatory framework pertaining to powers of FIUs is harmonised, which is not yet the case.
- The EBF emphasises that the scope and competencies of direct supervision of selected entities pursuant to Articles 16-25 should be properly calibrated to avoid overlaps and duplications with national supervisors. Our concern about duplications also includes the payment of supervisory fees. The current situation with several different disconnected supervisory authorities seems ineffective, cumbersome and expensive. The concept of joint supervisory teams as set out in Article 15 therefore needs to be carefully assessed to ensure it brings effectiveness rather than introducing another supervisory level on top.
- Moreover, both in case of selected and non-selected entities, a coordination between AMLA and national supervisory authorities should be ensured in order to avoid differences in secondary legislation and supervisory fragmentation that may impede harmonisation. Given that on-site visits fall within the supervisory competencies of AMLA, clarification is required on the distinction between this kind of inspections and the competencies of national supervisory authorities. This is also due to the fact that – according to the Commission's proposal – the number of "selected entities" is not stable but can vary depending on the results of the periodic assessment that AMLA conducts. Therefore, a credit or a financial institution can be a selected entity for a certain period of time and become a non-selected entity afterwards. A coordinated approach is necessary in order to avoid situations where entities need to comply with divergent rules depending on whether they are selected or non-selected entities.
- To that end, the EBF recommends the European Commission assesses any potential uneven impact on selected obliged entities subject to direct supervision by AMLA.
- Moreover, the EBF advises that AMLA's mandate regarding supervision of compliance with sanctions regulations that the AML regulation refers to is unclear. The EBF thus calls for an impact assessment and clarifications on sanctions supervision.

On a Coordination and Support Mechanism for Financial Intelligence Units (Articles 33 – 37)

- The EBF supports the establishment, pursuant to Articles 33-37, of an FIU support and coordination mechanism within AMLA as a means to tangibly improving the effectiveness of the current AML/CFT system.

- The EBF particularly welcomes the legislative efforts aimed at fostering a secure information exchange between FIUs, including through hosting FIU.net (as set out in Article 37).
- The EBF further welcomes AMLA's mandate to coordinate the conduct of joint analyses (Article 33), which has the potential to improve the detection of cross-border criminal activities.
- The EBF calls for entrusting AMLA with a mandate to conduct an assessment covering the critical topic of ineffectiveness in SAR filing processes focusing on the high false positive ratios. We propose this includes analysing the usefulness of feedback received from FIUs, particularly in light of Article 21 of the proposed AML Directive.

On Common Instruments (Articles 38 – 44)

- Regarding AMLA's competencies to draft Regulatory Technical Standards (RTS), guidelines and recommendations related to the professional obligations of obliged entities (customer due diligence measures, risks factors, group procedures, transactions monitoring, PEPs, outsourcing, etc), it is necessary to ensure that the future RTS do not dilute the regulatory standards already foreseen in the AMLR, by being too broad or imprecise in nature. This could undermine the goal of the AMLR, leading to discrepancies within Member States and eventually to legal uncertainty.
- We acknowledge the envisioned timeline whereby the AML Regulation shall apply from three years after its entry into force and AMLA/the Commission's competency to draft RTS (those powers conferred to the Commission for a period of four years after the AMLA Regulation enters into force as per Article 39) shall apply from the year 2023. Whereas the preparation and drafting of those RTS would require time, it is possible that obliged entities need to comply with the EU Single Rulebook prior to the adoption of the RTS, which may lead to uncertainty. The EBF believes that it is therefore of utmost importance to identify and prioritise the provisions that need to be further detailed directly in the regulations without delay.
- Moreover, although the competences of the European Banking Authority in the area of AML/CFT are removed and transferred to AMLA with the amendments of Regulation (EU) 1093/2010, more clarity would be required on how AMLA's RTS relate to the existing EBA RTS and guidelines directly concerning the AML/CFT and those indirectly concerning the AML/CFT (such as EBA guidelines on loan origination). The same question arises with regard to the guidelines of national supervisors. Maintaining these guidelines could run counter to the objective of harmonising legislation and practices. Moreover, they could create difficulties of articulation between the national guidelines and the AMLA guidelines.
- Finally, a distinction of powers needs to be drawn between AMLA and the ECB in the context of the Supervisory Review and Evaluation Process (SREP) where AML/CFT has been introduced. The assessment of the ML/TF risk will involve NCAs and AMLA together with the ECB through the inclusion of provisions in CRD5. We believe that great attention should be paid to the respect of the competencies of each authority and that any qualitative or quantitative supervisory action should duly take into account potential prior supervisory action. To this end we encourage

the exchange between the prudential and the AML supervisors to ensure that there is continuous flow of information, which also helps to enhance the efficiency of supervision. In particular, we believe that double reporting, double assessment, and double penalties for a same breach in the context of both AML/CFT framework and SREP should be avoided. Competencies to assess ML/FT risks under the SREP should be clearly allocated to AMLA in case of direct supervision or to AML/CFT national supervisors if supervision takes place at the national level.

On Organisation of the Authority (Articles 45 – 63) and Financial Provisions (Articles 64 – 72)

- The EBF recognises the importance of ensuring that AMLA is provided with adequate staffing and funding. However, we stress that the duplication of banking levies should be avoided. Contributions should also be requested from other regulated financial entities other than banks and non-financial businesses and professions.

On General and Final Provisions (Articles 82 – 93)

- The EBF welcomes the general recognition in Recital 60 of the increasingly important role of public-private partnerships as cooperation and information exchange fora between FIUs, various national supervisory and law enforcement authorities and obliged entities. Article 79, which provides an explicit legal basis for AMLA to take part in such partnerships is a positive development. This example should also be followed in the proposed AML Regulation, also part of the AML/CFT package.