



June 2021

European Financial Services  
Round Table

# EFR PAPER ON ANTI-MONEY LAUNDERING

## Key points

- The financial sector has an important role to play in AML/CTF to further protect the integrity of the financial system. At the same time, public authorities should step up the mark in fighting predicate crimes. Without this, money laundering will not go away.
- The EU rule book should be harmonised. Member States currently apply different interpretations and make use of options and national discretions provided for in the Directives. Criminals are exploiting these inconsistencies to the maximum extent. Significant parts of the Directive should be transferred to a maximum harmonisation Regulation.
- The EFR supports the proposal to set up a single EU AML Authority under certain conditions, such as a clear mandate with sole responsibility for the entities that will fall under direct supervision, separating its tasks from other [existing] authorities, a risk based selection of directly supervised entities, avoiding duplication of (reporting) requirements and supervision, and cost efficiency and a governance open to other stakeholders having a concrete experience of the markets (a board including independent members coming from the different industries concerned, appointed with strict rules preventing conflicts of interests).
- Direct EU AML oversight should not be limited to banks but should be broadened to encompass other actors which may present an AML risk. At the same time, sectors which are currently excluded by FATF and EU AML Directives, such as non-life insurance, should remain outside the scope of the upcoming Proposal. The broadening of the scope should also include new players, such as gatekeepers and fintechs, that have entered the financial markets bringing along an increasingly emerging risk of money laundering. Consistent and pervasive supervision of a harmonised and streamlined rulebook focused on effectiveness is essential to prevent criminals entering the financial system at the lowest entry point. The new AML Authority will need to have sufficient knowledge and resources considering the different activities of financial service being covered. The new framework should enable the use of interoperable digital identity solutions for customer due diligence and onboarding.
- The EFR sees information sharing in all its dimensions (between financial institutions and public-private) as a key enabler for making the system more effective. The EFR asks the European Commission to clarify that combatting financial crime is a legitimate ground under the GDPR, e.g. by asking the European Data Protection Board to clarify the guidelines on restrictions under Article 23 of the GDPR.
- The conditions under which operational data could be shared between public and private sectors, including on a cross-border basis should be broadened. A solid legal framework authorising under specific conditions such data sharing while respecting requirements related to personal data protection principles such as data minimisation, proportionality and transparency should be put in place.

## Introduction

The international prevention of money laundering is important for the integrity and the stability of the financial sector. This was one of the main reasons for the G7 in 1989 to set up the Financial Action Task Force on Money Laundering (FATF) followed by the Anti-Money Laundering (AML) Directive of the EU, since the main concern was at that time the threat posed to the banking system and to financial institutions. Since its inception, the FATF rules and the EU AML Directive have been amended several times and they were complemented in the beginning of the 2000's with standards in the fight against terrorist financing. Over the years the original aim of protecting the financial sector against AML threats has changed significantly by giving the financial sector the responsibility as gatekeeper.

On 7 May 2020, the European Commission adopted an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing, in which they state that the EU needs to be determined in ensuring that criminals do not benefit from the proceeds of their criminal activities. Therefore, an improvement of the current EU

AML/CFT framework is being proposed that is based on a) effective implementation of existing rules; b) a single EU rulebook; c) EU-level supervision; d) establishing a support and cooperation mechanism for financial intelligence units; e) criminal law enforcement and information sharing; and f) strengthening the international dimension.

The EFR fully agrees that rules concerning AML and Combating the Financing of Terrorism (CFT) are important and that the financial sector has an important role to play in this. The principle should be that measures are evidence-based or risk-based. In this respect it is noted that one of the aims of the FATF has always been to strengthen standards for higher risk situations, which is a good principle.

The EFR contributes to the European public policy debate on issues relating to financial services and to the financial stability with a view to completing the Single Market in financial services. The EFR fully subscribes that adequate and proportionate AML/CFT regulation is also in the interest of the financial sector to further protect the integrity of the financial system. With this paper EFR gives its views on some key aspects of the (upcoming) proposals of the European Commission.

We would also like to note, however, that as long as the underlying crimes and terrorism will not be dealt with effectively by the authorities, money laundering will continue to exist. Every time that measures are being taken in the fight against money laundering and against terrorist financing, criminals and terrorists will look for new ways and venues to launder money. The authorities will react again to that with more and stronger measures in several areas including the financial sector, always following the developments. It is time that the authorities get ahead of the curve.

## 1. Harmonisation of rules

### Harmonisation of EU rules

Financial market participants should do their utmost to prevent themselves from being used as the access point of preference to the financial system. Apart from these ongoing efforts by the private sector, the fact that AML Directives are transposed by Member States into national law in different ways, result in inconsistencies. Member States may apply different interpretations and make use of options and national discretions provided for in the Directives. Criminals are exploiting these inconsistencies to the maximum extent. Some Financial Institutions may also benefit from less restrictive regulations, resulting in a distortion of competition when operating in other Member States. There should be no place for such a regulatory arbitrage with a potential race to the bottom in the fight against money laundering. A Regulation would minimize these opportunities. Further, the lack of harmonisation makes it difficult for financial market participants to roll out a consistent, pan EU (let alone global) KYC Policies framework and operations that would effectively trace money laundering and terrorist financing attempts. Harmonisation of KYC standards will result in the opportunity to rely on cross-border KYC and thus in further completing the Single Market. EFR proposes to include – as a minimum – CDD requirements, UBO definitions and sanctions & measures in a directly binding Regulation.

## 2. Supervisory convergence including risk-based approach

### EU AML/CFT new Authority

It has now become clear that the European Commission will propose the setting-up of a new Authority aimed to put in place an effective AML/CFT framework. Under the right conditions, this is a positive step as there are limits regarding the extent to which convergence can be achieved by setting guidelines and standards. Consistent and pervasive supervision of a harmonised rulebook is essential to prevent criminals entering the financial system at the lowest entry point. The content, priorities of supervisory expectations differ from country to country. As do sanctions and measures. In some countries the AML supervisor applies regulatory fines (there is an upward trend in EU fines), in other countries supervisors take other measures or have a reluctant stance towards enforcing AML rules and leave it to the law enforcement authorities. This complicates the execution of a more global KYC/AML program and may lead to short term fixes instead of implementing sustainable solutions. Different supervisory expectations also hamper clear global priority setting within large financial sector groups.

We have understood that the proposed new AML Authority will be the direct supervisor of certain financial sector entities which operate cross-border and are in the highest risk category.<sup>1</sup> We would welcome this approach since it would create the opportunity for a real European solution by giving the full and sole responsibility concerning AML to one single European Authority for those entities that will fall under the AML Proposal thereby avoiding

<sup>1</sup> Speech at the AML intelligence boardroom series, EU Commissioner Mairead McGuinness, 17-05-2021

duplication of reporting and supervisory requirements and a further increase of the already very elevated costs that are involved with the financial sectors efforts to combat money laundering. At the same time it is important that putting into place a European Authority should clearly demonstrate the added value compared to the existing system and show how it will correct the dysfunctions observed. Cost effectiveness should be a priority, since the costs will have to be borne by the entities under its scope and should therefore not increase.

**Supervisory convergence** should be achieved in terms of measures, priorities and expectations based on the following principles and preconditions:

The scope of the new supervisory powers and related competences are clear, covering both the financial and the non-financial sector based on a risk sensitive approach. As the European Commission's cross-border risk report rightly points out that when we would close the loopholes in the financial sector, criminals will try other parts of the legitimate economy. There are examples of criminals using State's debt collecting agencies, Virtual Asset Service Providers, money transfer agents and Payment Service Providers. At the same time, sectors which are currently excluded by FATF and EU AML Directives, such as non-life insurance, should remain outside the scope of the upcoming Proposal.

- The governance of the new AML Authority should be truly European and should not be guided by national interests. Therefore, it should be open to other stakeholders than national AML authorities, having a concrete experience and knowledge of the markets (a board including independent members coming from the different industries concerned, appointed with strict rules preventing conflicts of interest, as it is already the case in some European countries). The structure and governance of the new AML Authority ensure a good balance between the need for centralization and for consistency with national supervision as well as a complete independence for strategic and operational decisions (e.g. choice of entities that fall under direct supervision, sanctions decisions,...). There should be no duplication of supervision between the AML Authority and national supervisors and therefore the AML Authority should have sole responsibility for the entities covered by the Proposal.
- The new AML Authority will need to have sufficient knowledge and resources considering the different activities of financial service being covered.
- Direct EU supervision should be applied to a pre-defined set of entities rather than only stepping in when domestic supervisors have proven to be less effective. In addition, it is of utmost importance that direct EU AML oversight will not be limited to banks but should be broadened to encompass other actors which may present an AML risk. This should also include new players, such as gatekeepers and fintechs, that have entered the financial markets bringing along an increasingly emerging risk for money laundering. This requires a set of criteria to define what entities should be considered significant in this context. As money laundering is prevalent a cross border activity and this is where the added value of EU wide supervision lies, only financial institutions with a significant cross border presence should be in scope, it is equally important that entities with an inherently low or medium risk with low velocity of cash flows and predominantly a domestic focus should be out of scope of the European supervision.
- The new Authority should build a streamlined and effective framework for cooperation of Financial Intelligence Units, rather than adding another layer of reporting, and avoid any overlap with other AML/CFT and regulatory supervisors.
- EU supervision should cover the EU internal market rather than the Eurozone.
- The new Authority should cooperate with other AML/CFT authorities on a global basis, and in particular for those in countries where European banks operate.

**Focusing on "Effectiveness":** EU AML supervision should focus on effectiveness. In line with FATF's approach focused on effective outcomes and the Wolfsberg Group's view that FI's AML/CFT approach should be assessed against its outcomes rather than compliance. Permitting an entity to embrace fully a risk-based approach is critical: discontinuing practices that are resource intensive but do little to mitigate financial crime risk, while re-directing resources to embolden controls that demonstrate a clear effectiveness in the fight against financial crime, will strengthen the role of the financial sector in supporting law enforcement. And explicit supervisory support for such an approach would encourage supervised entities to build the appropriate control framework necessary to seek out under-banked or financially excluded customer segments.

**Digital identity:** We support the emphasis in the European Commission's Digital Finance Strategy on establishing a sound legal framework to enable the use of digital identity solutions for customer due diligence and onboarding that are interoperable across EU Member States and third countries, given that financial crime does not respect borders. As the Commission has highlighted, it is important that the proposed new AML/CTF framework complements an updated framework for electronic identification (e-IDAS Regulation) so that both are aligned with the demands of the emerging EU digital assets framework.

### 3. Information sharing (within entities, between entities and between public and private side)

Whilst the Action Plan touches upon information sharing, the EFR believes an ambitious approach would allow better information sharing between obliged entities and in the context of public-private cooperation (see separate section below) - as there is tangible evidence that sharing information delivers better results. This requires a fundamental discussion about data protection laws and EU-wide clarity over its application.

Compliance with the GDPR is central to every scenario of information sharing, be it public-private, interbank or intrabank. However, only a limited number of jurisdictions provide clear and constructive guidance or legislation for information sharing. Even if a Member State provides a legal basis allowing information to be shared as a legitimate interest to process personal data for AML purposes, financial institutions remain hesitant to do so as this may be challenged in other jurisdictions where they operate. Clearly, here is a role to play for the EU.

This is a significant barrier to fighting cross border crime and undermines the ability to maintain a full overview of the financial crime threat to the Single Market. It equally makes private-private cooperation, including through shared KYC and transaction reporting utilities, more challenging. KYC/CDD process can be improved by using KYC Utilities, based on client consent and without prejudice to financial institutions' legal obligations. Also, sharing information on transactions would potentially bring to light the whole chain of transactions that constitute a money laundering scheme. In a number of countries, pilots are running on setting up Transaction Monitoring utilities (TM utility) which will enable participating entities to identify transaction patterns across financial institutions. In addition, strengthened capabilities to share information between the public (in particular FIUs) and the private sector, together with increased use of data and technology, would enable more targeted transaction monitoring on specific criminal typologies and where specific criminal names were provided to allow sophisticated network analysis, using AI to find associates, seize more of the proceeds of crime and make arrests. Similar to the below mentioned public private cooperation, it should be warranted that the sharing of personal data has a legitimate basis in terms of proportionality and subsidiarity. It appears that there is a common understanding that Article 23 of the GDPR forms the appropriate basis for this although this article has not yet been fully put to the test by all relevant data protection supervisors. A common interpretation on this article would be helpful to grasp the full potential from this kind of cooperation.

### 4. Close cooperation with public sector

#### The need to further cooperation with the public sector

The European Commission has acknowledged the role Public Private Partnerships (PPPs) can play in making better use of financial intelligence. Where PPPs exist, cooperation is usually limited to exchanges of information on typologies and trends and of aggregated data by FIUs and law enforcement authorities to obliged entities. The sharing of operational intelligence information for the purposes of monitoring the transactions of suspected persons is usually barely possible. Legal obstacles impede data sharing between obliged entities and competent authorities and as of today exchange of information from obliged entities to national competent authorities is only possible within the home country jurisdiction. Yet, by receiving operational data, obliged entities can be made aware of priority threats from the perspective of law enforcement or other public agencies and can use this information to more effectively identify suspect accounts linked to money laundering activity and report them. There are positive examples<sup>3</sup> of national PPPs in jurisdictions inside and outside the EU which have proven that both the efficiency and the effectiveness of the existing AML/CFT frameworks can be increased by fostering productive information exchange. Enabling banks to more rapidly share and receive information with other authorities could also radically enhance the response to cross-border organized crime.

<sup>2</sup> FATF: An effective system to combat money laundering and terrorist financing <https://www.fatf-gafi.org/publications/mutualevaluations/documents/effectiveness.html>

<sup>3</sup> The UK Joint Money Laundering Intelligence Taskforce JMLIT, the Netherlands Terrorist Financing Taskforce and the Europol Financial Intelligence Public Private Partnership (EFIPPP)

The European Financial Services Round Table (EFR) was formed in 2001. The Members of EFR are Chairmen and Chief Executive Officers of international banks or insurers with headquarters in Europe. EFR Members believe that a fully integrated EU financial market, a Single Market with consistent rules and requirements, combined with a strong, stable and competitive European financial services industry will lead to increased choice and better value for all users of financial services across the Member States of the European Union. An open and integrated market reflecting the diversity of banking and insurance business models will support investment and growth, expanding the overall soundness and competitiveness of the European economy.

#### EFR – European Financial Services Round Table (asbl)

Rond Point Schuman 11 | B-1040 Brussels | Belgium | Tel: +32 2 256 75 23 | Fax: +32 2 256 75 70 | [www.efr.be](http://www.efr.be)  
Siège social: Avenue Marnix 23 | B-1000 Bruxelles | Belgium | RPM BXL 0861.973.276