

## Position Paper

# REVIEW 3<sup>RD</sup> ANTI-MONEY LAUNDERING DIRECTIVE

### RECOMMENDATIONS

#### 1. INTRODUCTION

The European Payment Institutions Federation (EPIF) welcomes and encourages the private stakeholder consultation that is currently taking place concerning a review of the 3<sup>rd</sup> Anti-Money Laundering (AML) Directive.

Payment Institutions' (PI) compliance with anti-money laundering and counter terrorist financing obligations is a prerequisite for their authorisation under the Payment Services Directive (PSD). The current anti-money laundering framework was, however, established prior to the opening of the payment institutions market and subsequently is arguably not catered to the needs of their various business models.

EPIF would like to take the opportunity to identify some aspects which it considers key areas for review including, among others, the legislative method applied (minimum harmonisation as opposed to maximum harmonization), risk based approach, customer due diligence measures, or data protection issues.

We have expanded on these topics below and would welcome further consideration and dialogue on these and other points.

We have not commented on the issue relating to AML supervision and reporting obligations of PIs on this paper, since this topic is the subject matter of a separate position paper which will be shared with the European Commission services shortly.

#### 2. LEGISLATIVE METHOD

The existing regime set forth by the 3<sup>rd</sup> AML Directive is not based on the maximum harmonization principle. This results in Member States having the chance of implementing different rules for different subject matters, which often results in an uncoordinated and diverging application of the Directive.

PIs intending to operate on a pan-European basis have to deal with different AML regimes, causing them to considerably increase the resources needed for the application of AML rules in each country (included but not limited to software and systems development, hiring and training staff, obtaining

local legal advice). This has a direct impact on the cost of the services they provide and partially offset the advantages of being able to operate at a pan-European level, as permitted under the PSD.

Some examples of the impact that regulating AML on a “de minimis” basis has are found in Spain, where the legislator has, as permitted under the 3<sup>rd</sup> AML Directive, toughened the obligations applicable to PIs operating in the money remittance industry and, in some cases, even imposed obligations that are not envisaged in the 3<sup>rd</sup> AML Laundering Directive, e.g. (i) the money remittance activity is always considered as a high risk one and therefore all clients, collaborators and transactions are subject to enhanced due diligence and (ii) PI are obliged to settle the funds associated with money remittances through bank accounts held by their correspondents in the receive country.

Considering that AML is a fundamental part of the regulatory regime applicable to PIs operating in the EU, which recommends a harmonised approach similar to the one followed in the adoption of the PSD, we recommend a change of the legislative approach of the AML regulation. This would entail a maximum harmonisation regime, included but not limited to the elimination of Art. 5 of the 3<sup>rd</sup> AML Directive.

### **3. IMPACT ASSESSMENTS**

EPIF advocates for impact assessments to be carried out, and published, to support the rationale and effectiveness of any new proposed rules. It is worth mentioning that the global AML/CFT regulatory framework has been tightened during the last decade, thereby “raising the regulatory bar” but also the cost of compliance for the financial industry. No impact assessments have been made or published by the FATF or other bodies to support the introduction of new rules and EPIF would welcome this taking place.

### **4. RISK-BASED APPROACH**

EPIF supports a risk-based approach to customer identification, to assist financial institutions to effectively manage money laundering and terrorist financing risks as well as not to hamper payment innovation.

EPIF encourages the European Commission to build further on its risk-based approach while streamlining cross-border compliance costs for businesses, preferably by adopting a maximum harmonization approach, as stated above.

For that purpose, EPIF also considers it important that an impact assessment, accompanying a proposal for a review of the 3<sup>rd</sup> AML Directive, reflects on the compliance costs for various market stakeholders.

Furthermore, EPIF welcomes efforts to better align the AML Directive with the Data Protection Directive, the Payment Services Directive and the Transfer of Funds Regulation.

## **5. CUSTOMER DUE DILIGENCE MEASURES**

As a principle, EPIF believes Customer Due Diligence (CDD) requirements should be consistent across the EU and should increase in line with the risk profile of the activity, without hampering low-value payment products from being developed and offered.

For electronic money products, the 3rd AML Directive provides for optional exemptions from CDD requirements if certain monetary and aggregate thresholds are observed (Art. 11 (5) of Dir. 2005/60/EC).

We propose to apply the same optional exemptions to non-electronic money products for low-value retail payment products which do not involve e-money if the maximum amount transferred is no more than EUR 250 supplemented by an aggregate limit, and a “low-risk scenario” is maintained (e.g. via CDD checks at the back-end of the transaction).

For transactions over EUR 250, EPIF supports the introduction of a ‘tiered’ / ‘progressive’ approach for CDD, as advocated for wire transfers in the FATF Guidelines on Financial Inclusion (June 2011). This approach could be supplemented by a requirement to intensify transaction monitoring. Overall, and in light of the continuously sizeable informal remittance sector in Europe, this will foster a higher efficacy of the overall AML/CFT framework in Europe.

More generally, we would welcome further flexibility, consistency and more guidance on the practical use of a risk-based approach with respect to new payment methods (e.g. electronic and mobile payments), in particular with respect to non-face-to-face situations currently subject to enhanced CDD measures.

We would also welcome a consistent approach regarding the application of the CDD rules on occasional transactions (Art. 7 (b) of the 3<sup>rd</sup> AML Directive). This provision states that CDD measures shall apply to “occasional transactions amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked”.

However, some Member States have reduced this threshold considerably at their discretion (France’s threshold has been lowered to EUR 8,000, Italy and Spain apply CDD to all transactions regardless the amount, etc.). Moreover, there is no, or inconsistent, guidance on what constitutes “several operations which seem to be linked”.

Therefore, EPIF would welcome a consistent approach to CDD rules applicable to occasional transactions.

## **6. RELIANCE ON 3RD PARTY VERIFICATION**

EPIF would welcome clearer rules and a consistent approach from Member States regarding the ability of a firm to rely on other regulated financial institutions for purposes of customer due diligence.

## **7. DATA PROTECTION LAWS**

EPIF would welcome a better alignment between the 3rd Anti-Money laundering Directive and the Data Protection Directive, especially with respect to the collection and management of information on customers for the purpose of customer identification and verification process for non-face-to-face transactions.

In addition, a number of Member States have adopted a restrictive approach to the implementation of the Data Protection Directive which renders compliance with AML obligations difficult as well as poses cross-border compliance challenges for payment institutions.

## **8. POLITICALLY EXPOSED PERSONS (PEPS)**

EPIF would like to point at practical difficulties in the implementation of payment institutions' enhanced CDD obligations pertaining to payments transactions for Politically Exposed Persons (PEPs), due to the lack of public databases. Furthermore privately generated databases add a substantial cost for (small-scale) payment institutions.

Furthermore, clarity on the definition of PEPs would be needed, i.e. whether it includes domestic PEPs and how this is applied in Member States. The Directive (Art. 13(4)) refers to PEPs "residing in another Member State or in a third country" whereas the United Kingdom's implementing measures refer to connection with a foreign body (where place of residence is irrelevant).

## **9. RELATED LEGISLATION**

There are some topics that, although not expressly included in the 3<sup>rd</sup> AML Directive, also have an impact on the regulatory regime applicable to PIs. Among these, we find the "Regulation on information on the payer accompanying transfers of funds" (Regulation (EC) No 1781/2006).

This regulation poses certain compliance issues and is not consistent with other provisions (namely the CDD requirements set forth in the 3<sup>rd</sup> AML Directive).

Firstly, it creates an obligation to verify complete information on the payer at a threshold of EUR 1,000. However, this seems to contradict the Art. 7 (b) of the 3<sup>rd</sup> AML Directive which only requires CDD above a EUR 15,000 threshold (only for occasional transactions).

In addition to this, there are other issues relating to the adequacy of the payer information that has to accompany transactions. For intra-EEA transactions, it would appear that an account number (or more likely a unique reference number) would be sufficient. For transactions outside the EEA, Complete Information on the Payer (CIP) would be required. This would seem rather cumbersome for low-value transactions or occasional transactions below the occasional transaction threshold.

At this stage, it seems rather clear that when this regulation was drawn up the focus was payments made by banks paying between customer accounts. Consequently, the regulation does not fit very well with the business model of firms offering payment services other than banks.

Hence, EPIF would encourage a review of the transfer of funds regulation as part of the broader review of the existing AML legislation, in order to find a solution that applies to different type of payment service providers.

#### ABOUT US

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*EPIF represents the interests of the payment institution sector at European level. Its members represent the broad range of business models covered by the Payment Services Directive (PSD) and include companies and national associations from every part of Europe. EPIF seeks to represent the voice of this industry with EU institutions, policy makers and stakeholders. It aims to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment.*

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