

EPIF WORKSHOP

The interrelationship between the data protection and the AML regimes

4 September 2013

European Parliament

Brussels

13.00-15.00

EPIF organised a workshop on 4th September 2013 on 'The interrelationship between the data protection and the AML regimes' kindly hosted by the LIBE rapporteur for the 4th AML Directive, Ms Judith Sargentini MEP. The synopsis below reflects the discussions which were held during the EPIF workshop.

Synopsis

Ms Sargentini gave an introduction speech, which was followed by speeches from the following industry participants and EPIF members.

The following participants contributed to this lively discussion:

- Bill Newton Dunn: MEP and member of the CRIM Committee
- Peter Hustinx: European Data Protection Supervisor
- Jeroen Hooijer: Head of the AML Unit,



European Commission

- Martin Frohn: Deputy Head of the AML Unit, European Commission
- Ieva Navickaitė, Financial Services attaché, Lithuanian Presidency
- Rafael Abad, Policy Expert (AML and licensing issues), European Banking Authority
- Philip Robinson, Senior advisor, E-Money Association

Ms Judith Sargentini MEP

Identified Sources of Concerns

- Industry participants mentioned **the need for legal certainty**. The aim for companies is to avoid having to comply with conflicting obligations and facing the significant sanctions associated with these obligations (especially under the new regime). Creating an exemption from the ban on profiling (set out in the proposed General Data Protection Regulation) for the processing of personal data imposed by AML rules would bring the necessary legal certainty.



Ms Sarah Sheehan – Chair of EPIF Board - American Express

Some industry participants referred to the existence of contradictions between the existing AML and data protection regimes.

- It was suggested that the proposed 4th AML Directive **lacks the necessary precision** with respect to the compliance with data protection rules.
- The **minimum harmonisation** nature of the proposed 4th AML Directive can result in fragmented and sometimes contradictory national implementation.
- The **lack of concrete remedies** will negatively impact customers.
- Finally, it was mentioned that Central Banks and financial regulators know little about data protection.

avoid having to comply with conflicting obligations and facing the significant sanctions associated with these obligations (especially under the new regime). Creating an exemption from the ban on profiling (set out in the proposed General Data Protection Regulation) for the processing of personal data imposed by AML rules would bring the necessary legal certainty.

- **AML rules** compel companies to collect information on their customers. This could potentially lead to a breach of both current and proposed data protection regimes.



Mr Bill Newton Dunn MEP

Specific conflicting provisions

- Industry speakers highlighted the issue of the **‘agent network’**: criminal background checks on agents required in some Member States clash with current and proposed data protection rules. The same principle would apply for investigations into ‘politically exposed people’.
- Profiling was identified as one of the key issues: in the successive AML laws, a transition from ‘rule-based approach’ to the **‘risk-based’ approach** (which amounts to profiling) can be observed. Policy makers explained that the provisions on ‘profiling’ provide for certain safeguards but do not constitute an absolute prohibition.
- Policy makers added that the ‘right to be forgotten’ constitutes a strong statement but requires the completion of a number of conditions to be implemented.
- The obligation imposed on companies to keep certain data (data retention) for AML purposes could potentially clash with the ‘right to be forgotten’.



Concrete AML compliance measures implemented by the industry

- Industry speakers described the role of a compliance officer and the measures adopted by Payment Institutions (PIs) to detect money laundering and to comply with the existing AML legislation. The control and supervision are exercised at the time of the transaction and post-transaction. Blocked transactions are subsequently analysed.
- Various compliance measures were described:
 - Annual risk assessments
 - (Enhanced) Customer due diligence
 - ‘Know your customer’ rules
 - Analysis of customers patterns
 - Training of agents
 - Filing to Financial Intelligence Units and regulators

Jeroen Hooijer – Head of the AML Unit, European Commission

Potential Exemption to the proposed data protection regime

- Policy makers agreed on the horizontal nature of the data protection regime. While this was not discussed in detail at the workshop itself MEPs mentioned on the fringes of the event that they supported the idea of an exemption for AML compliance. The Commission was sceptical.
- Data protection and the prevention of money laundering constitute conflicting policy objectives.
- The aim of the industry is to obtain the inclusion of a provision in the proposed General Data Protection Regulation stipulating that the processing of personal data required by AML legislation constitutes a legitimate exemption from the general rule.

Proposed options and Concrete Recommendations

- Participants outlined the **transparency needed** to determine the **'beneficiary ownership'**. In order to address it, amendments to the 4th AML Directive establishing public registers with restricted access will be tabled. Higher transparency standards imposed by the legislation will reduce the need for policing by private companies.
- Participants called for **enhanced democratic scrutiny** of institutions involved in the development of AML standards, such as the FATF (Financial Action Task Force) and the ESAs (European Supervisory Agencies)
- Industry participants and some policy makers called for a maximum harmonisation for AML



legislation (like for data protection).

- The window of opportunity to bring consistency is created by the simultaneous review of both regimes.

- The improvement of the training for AML compliance officers was viewed as a method to ensure the respect of data protection rules.

- Participants noted that **data protection** relies heavily on general principles, creating a need for guidance (without which the level playing field does not exist).

- Finally, participants insisted on the need for **cooperation between data protection and AML regulators**. The EBA Committee could constitute a discussion forum bringing together the specialised regulators (data protection and AML).

- The 'risk-based approach' was viewed as the best solution to perform targeted investigations and to mitigate the impact on data protection (exclude small amount transactions etc.).



