

EPIF Comments to the Commission's AML Package

November 2021

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EPIF very much welcomes the Commission's proposals as part of the AML package. We have been strong supporters of moving to greater harmonization in the EU Anti-Money Laundering (AML) framework and we very much welcome the fact that parts of the Directives have been turned into a maximum harmonization **Regulation**.

EPIF welcomes greater harmonisation on several areas such as:

- **Reduce reporting burden** by streamlining technology and the data elements, as well as standardizing the reporting framework. EPIF welcomes the clearer rules on how reportable transactions are to be identified. EPIF looks forward to the AMLA draft implementing technical standards specifying a common template for the reporting of suspicious transactions to be used as a uniform basis throughout the EU. Having a more effective functioning of the FIUs' analytical activities and cooperation is key to ensure the efficiency of the system.
- **Clarifications and additional details regarding CDD**. EPIF also supports building and implementing harmonising CDD procedures and a move from paper-based Know-Your-Customer (KYC) to online and innovative on-boarding and KYC solutions building on e-ID are key for EPIF members.
- Provisions **clarifying the conditions that apply to the processing of certain categories of personal data** of a more sensitive nature by obliged entities. EPIF has been calling for clarifications to create **legal certainty around the application of the GDPR**.

While supporting greater harmonisation, standardisation and clarity to enable financial firms to better tackle financial crime across the EU, EPIF would however like to stress the importance of retaining room for a risk-based approach and avoiding becoming overly prescriptive in the requirements firms must apply. EPIF is convinced that its members are best placed to assess the risk of their customer relationships and to take the most appropriate decisions regarding how to best mitigate this risk.

EPIF also supports **actions to facilitate information exchange between the FIUs**, between the obliged entities and the public sector, as well as between private sector obliged entities and the FIUs, and we see the provisions that require the AMLA to develop **common reporting templates** and practices for Suspicious Transaction Reports/Suspicious Activity Reports ("STR/SAR") as a very positive progress. Common reports and templates will result in more effective reporting and increased efficiency in the fight against Money Laundering. We would like to add that **promoting the use and development of new technologies** that can build on these common templates and reduce barriers to entry to new companies and costs to the consumer would be very beneficial.

Furthermore, EPIF also welcomes the consultation that has been published on the **guidance on public-private partnerships (PPPs)**. We support the development of PPPs and note that, in order to achieve this goal, more

specific rules on the obligation for FIUs to provide feedback to obliged entities must be put in place as well as promoting the sharing of good practices.

With regard to the **EU Supervisory body**, EPIF recommends not to make a debate on new institutional arrangements in the EU at the expense of effective progress on the above priorities. This, or any, debate should not be allowed to distract from the effective progress on harmonisation.

Furthermore, EPIF believes that the AML package as a whole must help establish a true Single Market for cross-border financial services. Proposed rules requiring local presence (e.g. appointing a CPC in each Member State) are burdensome for pan-EU firms, lead to more fragmentation, and are not linked with firms delivering better AML controls. With increased cross-border information sharing between FIUs and the rise of remote working, rules requiring local presence, such as through the use of Central Contact Points, do not align with the principle of passporting and will divert firms' resources from tackling the issues at hand. Moreover, it is important to avoid the assumption that cross-border activity within the EU is inherently higher risk. These types of rules will disproportionately hurt firms located in smaller markets versus larger national markets.

EPIF remains concerned about the procedure that the AMLA would follow in order to take the decision **over which financial institutions should be subject to direct EU supervision** based on what is deemed to be high-risk institutions. There should also be no automaticity that cross-border business *per se* is deemed to be of higher risk as this would speak against the idea of the European passport and the Single Market. We believe that any such assessment as to the respective institution's risk profile should take into account a number of measures:

- the size of the cross-border activities of the institution (taking into account activities in third countries, especially high risk third countries, rather than cross-border activities within the Union);
- the nature of these activities; and most importantly,
- the risk **mitigation techniques and past supervisory track record** of the respective institution.

Any transfer of supervisory responsibility or decision-making by way of a joint EU and Member State arrangement should therefore follow a rigorous review and **not be taken based on automatic thresholds or by designating particular sectors**, such as the non-bank payment sector, a priority high risk. This decision should only be taken as a last resort, on the basis of an assessment of the relevant competent authorities and based on the above criteria or alternatively where a non-bank payment institution has itself requested to come under EU supervision or oversight in the interest of operational efficiency. The AML package should establish a true level playing field between different types of institutions and EPIF believes that current differentiations in the text between credit and payment institutions which imply higher risks related to AML for the latter are harmful. Banks and non-banks are currently subject to the same AML regulation and we therefore fail to grasp the rationale behind these distinctions.

EPIF welcomes that the Regulation in its Recital 34 acknowledges that payment initiation service providers often have a merchant-facing business model similar to e.g. a card acquirer, whereby the obliged entity's customer is the payee (the online merchant) and not the payer (the end-consumer). However, EPIF would recommend for the Recital to be further clarified to make it fully clear that this principle holds also if a payer uses the services of a payment initiation service provider multiple times, and that (reflecting Recital 31 in PSD2) if the payment initiation service provider holds merchant funds then again it is the merchant that is the customer.

Both the text for the proposed Regulation and the revision to the AML Directive rightly make repeated reference to using a risk-based approach. **On the 6th AMLD**, while we very much welcome the improvements made in

order to ensure a greater level of convergence in the practices of supervisors and FIUs and in relation to cooperation among competent authorities. EPIF, however, has concerns with a number of the **provisions on risk assessment**. For the **SNRA**, instead of focusing on sectors, EPIF would recommend using **a risk-based approach, focusing on activities, analysing existing risks and the mitigation measures** currently in place to tackle these.

EPIF members would like to point to the effects that the methodology of this SNRA is already having on their business models. Various money or value transfer services (MVTs) have experienced the unilateral closure of their bank accounts and the refusal by banks to offer them banking services, which we view as breaching Article 36 of the PSD2. This poses a fundamental threat to the activities of our members, their employees and their customers in these countries. This is as a result of the current SNRA labelling these activities as high risk, which, as mentioned previously, is no longer applicable to the new and developing payments market which includes many different players who employ new technologies.

The introduction of recent legislation such as the PSD2 has led to increased competition in the payments market and has allowed new players such as FinTechs and start-ups to thrive. This has had an enormous impact on traditional models and renders the methodology used in previous SNRAs inadequate in fully representing the current market. Instead, EPIF members contend that it is important to acknowledge the transformation that digital onboarding, dynamic risk assessments, big data analytics, cloud computing, artificial intelligence and blockchain are contributing to in the way financial products are designed, processed and distributed. These allow the industry to put in place extremely efficient risk mitigation measures that prevent ML and TF, which are not recognised in the current SNRA. We would also like to invite the Commission to align the rating with national risk assessments, which have a 5-scale rating from low-very high, and avoid the heavy use of the term 'significant'.

It is also important to note the differences between various types of technology players. AML compliance is very costly and all EPIF members invest significant resources in ensuring that the latest AML/CFT standards are met. Furthermore, EPIF members invest additional resources in deploying **cutting-edge new technologies** such as data analytics to ensure that their mitigation measures are as efficient as possible. EPIF members suggest that, due to their additional resources, large players are more capable of not only ensuring that AML/CFT measures are complied with, but also in taking extra steps to make their processes as seamless and efficient as possible. It is also important to recognise that additional burdens and lack of recognition of the efforts made by Financial Institutions could reduce the incentives for the industry to continue innovating and focus on pure compliance which has proven to be less effective.

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).