European Banking Industry Committee

European Banking Federation (EBF) • European Savings and Retail Banking Group (ESBG) • European Association of Cooperative Banks (EACB) • European Mortgage Federation-European Covered Bonds Council (EMF-ECBC) • European Federation of Building Societies (EFBS) • European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope) • European Association of Public Banks (EAPB)

To:
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Re: EBIC answer to EC questionnaire on FIU cooperation and AML/CFT supervision at EU level

Dear Mrs Pruna,

We welcome the opportunity to comment on the European Commission proposals and ideas on improving FIU cooperation and strengthening Anti-Money Laundering and Combatting Financing of Terrorism (AML/CFT) supervision at EU-level.

Acknowledging the seriousness of the current money laundering cases we believe that these cases are based – insofar as this can be judged – not on regulatory, but on enforcement deficiencies of the competent authorities. It is therefore important that highly mediatised cases do not lead to a political knee-jerk reaction resulting in the introduction of new regulatory measures without a due and proper consultation process.

We would like to stress that the European banking industry is highly regulated and has during the past decade invested considerable resources in measures to support the combat of money-laundering and terrorism financing and more generally the prevention of financial crime. Financial institutions have special dedicated staffs (e.g. Compliance or AML-Officers) that ensure that all business units are well trained to recognise risks of financial crime. Suspicious transactions are flagged and brought to the attention of public authorities which may use such financial information in their investigations on criminal activities.

Generally, the strengthening of the European Banking Authority (EBA) as a regulatory authority in the area of AML/CFT is regarded by the European Banking Industry Committee (EBIC) with some degree of scepticism. In the opinion of EBIC, national specificities must continue to be sufficiently taken into account and a continuous dialogue with credit institutions and associations must be ensured. Moreover, any move towards an operational supervision role of the EBA should ensure that there is strict coherence in the sphere of AML/CFT supervision for systemically important credit institutions and other credit institutions, thus avoiding supervisory distortions and arbitrage.

EBIC rather believes that strengthening the exchange of investigative and law enforcement agencies with credit institutions, including cross border exchange is the right path towards advancing the AML/CFT regime of the EU. Feedback from these authorities is important for successful AML/CFT policies of credit institutions, needs upgrading and must not be restricted by a shift of AML/CFT oversight to the EU-level.

We believe that many of the identified short-comings by the special EC/ESA/ECB working group will be actually covered by the Fifth Anti-Money Laundering Directive (5. AMLD). Therefore, it is key to wait for the proper implementation of this Directive before new measures are adopted. The implementation of the 5. AMLD in the EU Member States, which is expected to take place by January 2020, will require increased attention, in particular concerning the proper set-up of beneficial ownership registers, although such information in the registers of many EU Member States is often found to be either deficient or unreliable. In some EU Member States there are sound approaches to improving the usability of the register. In Austria, for example, there is the option of retrieving reliable "extended" extracts from the register, upon which the obligated party may legally rely under certain conditions. This should also be possible in other Member States in a similar form. In addition, due to a new de facto obligation to use the Transparency Register for credit institutions, the rules governing the access fees should be revised in many Member States. The best solution would be completely free access, such as in Denmark or the possibility of being billed at cheaper flat rate access rates, as is the case in Austria.

Finally, we would like to welcome the methodological approach taken in the supranational risk assessment undertaken by the European Commission. The past assessment has shown that – from an overall perspective – the European banking sector is well aware of risks and well equipped to tackle them. Due process would require that this assessment process and the implementation of the latest Directive are completed before new measures are considered.

Yours sincerely,

Chris De Noose
EBIC Chairman

Indranil Ganguli
EBIC AML WG Chairman

Keeping the above in mind EBIC welcomes the opportunity to answer your specific questions as stated underneath:

I) The cooperation between EU FIUs and obliged entities at domestic level

Questions:

In addition to STRs - what kind of reports do you send to the FIU in your Member state (For example, UTR, Cash transaction reports)?

In many Member States an STR is the standard umbrella tool under which one or a number of subsequent reports referring to the same case are submitted. Regarding reporting, suspicions are reported to the FIU. Cash transaction reporting is not common but could be used for instance by casinos. In some Member States an SAR is also sent.

Are you as an obliged entity expected to signal mere anomalies or are you supposed to detect well-grounded and substantiated criminal behaviors? Are there objective criteria, which, once met, oblige you to file a report?

Nearly all STRs are triggered by a conjunction of factors (for instance suspicious jurisdiction and/or large amounts of cash etc.). These together represent an anomaly. However, they cannot be defined as a formula as they can come up in various patterns.

In some EU Member States the triggering threshold for an STR is quite low, as banks are obliged and expected to file a report to the FIU when the bank has reasonable grounds to suspect money laundering or terrorism financing. This has led to high levels of STRs/SARs filed in those Member States.

In what form are the triggering factors defined for your entity to file a report to the FIU? Are the triggering notion of "suspicion" qualified by guidance or indicators? If yes, are these given at national or sectoral level, or are they determined by your entity?

In most EU Member States FIUs to some extent define triggering factors, based on FATF guidance but also taking into account national and sectoral specificities. However, credit institutions – by taking into account various sources and indicators – have their individual risk based approach in most of the instances as a one size fits all approach would not be useful here. Furthermore, credit institutions like cooperative and savings banks have their own parameterized electronic monitoring systems which provide fairly robust triggers to examine suspicious transactions and business cases.

Is there a national IT structure that is available to you to report STRs to the national FIU? Do you send other information through this IT structure?

Several EU Member States have set up or are in the process of setting up requisite IT infrastructure. There have been worrying reports about major IT problems which have created delays in the processing of STRs and have negatively affected the required feedback capabilities of the FIUs to obliged entities. In some countries the FIU will not be able to provide the required feedback for years to come.

Is there a standardized template used in your Member State or in your specific sector for STRs? If you are a member of an enterprise group, do you use the same template or follow the same procedure for STR reporting at the group level?

Several Member States have set up standardised templates based on the application "goAML" provided by the United Nations. Banking groups tend to apply a group-wide approach to investigate suspicious behaviour.

Does your FIU provide feedback to reporting/obliged entities? If so, how? (For example, regular meetings, dissemination of FATF typology reports and guidance documents, own reports and guidance documents in the context of national (or EU) risk assessments etc.)?

Generally, feedback is provided in Member States on a very limited scale, if at all. This may be done by responding to STRs, with due consideration of the confidentiality obligation. There are also regular meetings of the industry with the FIU. However, feedback is provided on a limited scale and not in written form. Written reports are – if at all – generally published at national level and therefore quite general and abstract as regarding the information content and quality (for example how many STRs were submitted in the sector and some common modus operandi of money laundering).

Do you think that this feedback/cooperation can be improved for both national and cross border reports? If so, how?

EBIC considers that improving feedback should be a top priority, even if there may be limitations for cross-border cooperation due to national specificities. More information, in a structured format, is needed in order to improve reporting in general. Credit institutions require specific feedback on particular STRs. They would need to know in particular, wherever a FIU is an administrative FIU and not part of the police or prosecution, if the STR has been handed on to law enforcement agencies or not. Further information on information sharing deficits between competent authorities of the same Member State and/or of different Member States would also be useful. It is also important that Member States publish the action plans resulting from their respective national risk assessments as has been done in the UK. We believe that by providing feedback both on modus operandi and the usefulness of the reports the AML/CTF regime would be strengthened. Feedback and cooperation could be improved both on the side of the FIUs but also on the side of the supervisory authorities.

Do you think that a structured FIU – private stakeholder dialogue would be useful? If yes, how do you think this should be organised? Do you consider it useful/necessary that regular/structured dialogues with FIUs also involve law enforcement authorities (e.g. in form of PPPs)?

EBIC believes such a dialogue would be useful and would benefit from the participation of law enforcement authorities. The dialogue could be organised by establishing an AML/CTF coordination body at national level, steered by representatives from the competent authorities and law enforcement authorities, with the task to inter alia gather, analyse and share information and experience from FIUs, supervisory authorities and law enforcement authorities regarding risks, latest trends, typologies/modus operandi with the obliged entities. The type of information should for example include clearer information on threat levels, (trans)national crime patterns and names of criminal organisations and networks but also results of customs or tax investigations on a case-by-case basis.

EBIC also believes that the EU should allow the emergence of cooperation mechanisms that allow for an exchange of information – under certain safeguards - between credit institutions which is indispensable for an efficient fight against financial crime. Several examples of such mechanisms have been discussed at the FATF, for example between banks in the UK or between US and Mexican banks. Unfortunately the current rules to not support the emergence of such best practice models by taking an overly restrictive approach. This and the unwillingness and incapacity on the side of the competent authorities substantially limit the room for Member States to enable a fruitful and mutually beneficial process of cooperation.

Do you see a role for an EU body in such a dialogue?

Generally, a better cooperation and information exchange between the private industry and the competent national authorities is necessary to fulfil the purpose of the AML/CTF regime. An EU-body could only have a coordination role in this process by bringing the private and public sector stakeholders together into a dialogue.

II) The cooperation between EU FIUs and obliged entities across borders

How do you interpret the notion of "establishment" in Article 33(2) AMLD: shall an agency or an establishment which does not have any separate legal personality from the head office in the other Member State file STRs in the Member State of the head office? Shall a subsidiary member of a group of companies ("filiale") report at the place where the parent company of the same group is seated?

EBIC believes that the focus should remain on the place of establishment. Reporting duties for agents would not be a good idea. However, in some countries an interpretation exists, whereby a branch, that does not have a separate legal personality, shall file STRs/SARs in the Member State where the branch is established and the business is situated, i.e. not in the Member State of the head office.

If you, as an obliged entity, carry out activities under the control/instruction or on behalf of a business established in another Member State, do you file STRs and SARs with the FIU in the Member State where this business is situated? How do you ensure that the report is filed with the FIU in the other Member State (do you report directly to the foreign FIU or do you transfer the information to the branch where the business is established and this latter is filing the report "domestically" in its MS)?

No comments.

Do you encounter any difficulties in the reporting to the FIU in another Member State? If yes, what type of difficulties?

No difficulties reported.

Do you have to file STRs or SARs with FIUs which are situated in third States (i.e. in a State which is not an EU Member State)? Do you share STRs or SARs with a branch of your entreprise which is situated in a third State?

Many banking groups have to file STRs/SARs with FIUs in Third Countries. Tipping off prohibitions and restrictive data protection rules may prevent the sharing of such reports between branches.

If the answer to the previous question is in the affirmative, do you follow the same procedure as in cases of reporting/disseminating information to an FIU or branch in another Member State, or do you apply additional safeguards? How do you take into account EU data protection requirements when sharing information with third countries' FIUs/branches?

No comments.

Would you see a role for an EU body to adopt a binding STR template and/or binding standards/guidelines on (cross-border) STRs reporting? Would this cover all STRs or STRs from certain obliged entities or STRs over a certain threshold?

EBIC considers it as too early for such a role at the EU-level. In the opinion of EBIC the adoption of such a template would be difficult for the reasons stated before (there is no EU-harmonised

formula as to what exactly constitutes an STR). Nevertheless, the cooperation between FIUs and the institutionalised exchange with private sector entities would probably benefit and contribute to the process of developing and introducing an EU reference template and/or standards on STRs reporting at a later stage. However, in order to give a final answer, it needs to be further specified what the objective and scope of the standards should be. The demarcation lines towards national requirements would also need to be clarified.

What is your opinion on establishing a centralised filing of STRs and other information from obliged entities to a single contact point in the EU, which would then dispatch such STRs to the relevant Member States FIUs? Would this cover all STRs or STRs from certain obliged entities or STRs over a certain threshold or STRs with a cross-border element?

EBIC is not in favour of this proposal as it would probably lead to (a) protracted reporting and investigating procedures as well as further – possibly unnecessary – requests for enquiries (due to lack of understanding of national specificities by the EU-officers working in such a "single contact point")and (b) a corresponding increase in administrative burden especially for credit institutions caused in part by the serious delays in the handling of STRs. However, the cross-border information sharing between different national authorities and feedback to the financial industry is very important so that further coordination measures could be envisaged to promote and coordinate these aspects in a constructive manner.

III) AML/CTF Supervision at EU level

Questions:
Does the FIU in your Member State also have supervisory functions? If so, of which obliged entities?

The situation differs strongly from one Member State to another.

Do you see a merit in the combination of the AML analytical and AML supervisory functions at one entity and why?

EBIC would like to stress that FIUs and supervisory authorities have quite different tasks, goals and roles within the AML/CTF regime and it would probably not be in the best interests of many national AML/CTF regimes to combine them. Nevertheless, supervision needs to be more clearly connected to the actual risks and the cooperation as well as information sharing between the FIUs, supervisory authorities, law enforcement authorities and the industry regarding modus operandi needs to be enhanced. An AML/CTF coordination body at national level, steered by representatives from the competent authorities and law enforcement authorities, with the task to inter alia gather, analyse and share information could serve this purpose.

Could an EU body also carry out functions relating to supervision of obliged entities with economic activity in several Member States?

No comments as it is unclear what the true objective of the question is.

What kind of supervisory functions could an EU body carry out? Guidelines? Strategic analysis and trends? Reviews? Enforcement? For all or some of the obliged entities?

EBIC does not see any necessity for a new or other specifically designated AML/CFT institution of the EU as such a step would be absolutely premature at this stage. The 5. AMLD and its provisions are not yet transposed in all Member States and the EU framework for cooperation and s information exchange has not been established across the board in the required quality. The EU still lacks harmonised and well connected registers on beneficial ownership, bank accounts and information on Politically Exposed Persons (functions). If necessary, EBA and the other ESAs should rather concentrate with their role of publishing joint guidelines specifying the modalities of cooperation and information exchange between the competent authorities and should assist them in cases of disagreements.