European Banking Industry Committee

European Banking Federation (EBF) ● European Savings and Retail Banking Group (ESBG) ● European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) ● 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)

For the attention of:
Mr. Eero Heinäluoma, Member of the European Parliament
Mr. Damien Carême, Member of the European Parliament
[Ms. Raluca Pruna, Head of Financial Crime Unit, DG FISMA]
[Mr. Claude Bocqueraz, Deputy Head of Financial Crime Unit, DG FISMA]
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EBIC high level concerns and priorities on the (coming) trilogue negotiations on the AML/CFT framework- AML Regulation

Dear Madam, Dear Sir,

The European Banking Industry Committee welcomes the EU co-legislators' efforts to improve the EU AML/CFT Framework. We believe that in particular the proposal of the European Commission for a new regulation, together with many amendments made by the Council and the EP will greatly improve the clarity and efficiency of the rules.

The framework will certainly benefit from being more coherent and simplified by introducing some elements of the Fifth Directive in a new (technical) regulation. But regulations assume the same type of situation in all Member States, whereas the threats they face, the types of crime, their modus operandi, the culture and the criminal groups differ widely, so an ill-tuned regulation may in some cases reduce flexibility. For this reason we have called for a harmonised legislation on the basis of the risk-based approach principle that ensures that resources are allocated to the areas where they are needed. This is why- in addition to the already expressed views by EBIC member organizations[1]- we would like to highlight some issues of particular concern, shared by the wider European banking sector, and that we would like to bring to the attention of legislators.

These concerns refer to the need for exchange of information among the different stakeholders, a workable concept of beneficial ownership, a targeted definition of Politically exposed persons, the possibility to outsource complex CDD requirements and finally reducing excessive reporting obligations and the urgent need for appropriate feedback from public authorities, especially with regard to filed suspicious activity reports. Please find our main concerns explained below.

Kind Regards,
EBIC President EBIC AML WG Chair

[1] See positions from EBF, ESBG and EACB on the AML package as well as the EBF, ESBG, EACB, EAPB, EFAMA Joint industry letter on proposed lowering of beneficial ownership thresholds

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Peter Simon Indranil Ganguli

1. Exchange of information

Firstly, the basis for effective and efficient anti-money laundering is a cross-sectoral exchange of information between the authorities and obliged entities as well as among the obliged entities themselves. This can also take place in the form of public private partnerships (PPP). Currently, there is no legal basis that would enable such an exchange, but it should definitely be introduced. While the Commission has not included this in its Proposal, we welcome the amendments suggested by the Council to enable the exchange of information between obliged entities.

We share the view that "*it is important to allow obliged entities to exchange information not only between group members, but also in certain cases between credit and financial institutions and other entities that operate within networks, in full compliance with data protection rules*" (see Recital 84 of the Council mandate for negotiations on the exemptions from the prohibition of disclosure. We hence support the Council's proposal to extend the derogation to Article 54(1) to disclosure of information within PPPs

We also support the Council's position to include a legal basis for the exchange of personal data between obliged entities, subject to certain conditions, as defined in Article 55(5). We believe this would provide more legal certainty while ensuring that personal data protection rules are observed.

2. Beneficial Ownership- definition and identification with registers

- <u>Definition</u>

We do not agree that reducing the percentage threshold that serves as an indication of ownership of a legal entity from 25% to 5% as suggested by some MEPs would reduce opportunities for transparency rules to be circumvented. We have significant concerns that such an amendment would be of little benefit in identifying controlling interest holders and would instead place a disproportionate burden on obliged entities. Reducing the threshold for

beneficial ownership to as low as 5% would fundamentally change the concept of beneficial ownership from being indicative of control to instead establishing a mechanical 'look-through' approach whereby those with a minimal ownership interest in the company are identified irrespective of their ability to exercise control over its affairs. This requirement of 5%, also considering that the meaning of the expression "on every level of ownership" and the way the ownership is calculated remains unclear, would not only mean a disproportionate increase of BOs, but also those captured / flagged in an intermediate structure (within a given company tree) would not pass the test of ultimately owning or controlling the account holder. Instead of introducing more transparency into a company structure such constraints would only cause an expansion of data points to be obtained and monitored along the relationship with the customer.

Therefore, we welcome the Council amendments in this regard and the confirmation of the 25% threshold. We would welcome clarifications on the calculation basis in case of indirect shareholding to avoid discrepancies. The need to have a consistent approach for identifying the BO is of high importance also in the view of the interconnection of the BO registers. We caution, however, that according to the Council's text, the Commission is empowered to adopt delegated acts to amend the AMLR in certain points. In particular, the proposed Article 42(4)(a) allows the Commission to lower the threshold for determining the ultimate beneficial owner of certain categories of legal entities which are associated with higher ML risks. Certain individual banks already apply lower thresholds for high-risk customers, however concerns could be raised about how this would apply to entire segments of customers.

- Inability to comply with the requirement to apply customer due diligence measures

According to Article 17(3) of the Council position, an obliged entity shall not enter into business relationship with a legal entity incorporated outside the Union or with a legal arrangement administered outside the Union, whose beneficial ownership information are not held in the central BO register, except in cases where an obliged entity entering into business relationship with a legal entity operates in a sector that is associated with low ML/TF risks and the business relationship or intermediated or linked transactions do not exceed EUR 250 000 or the equivalent in national currency. This provision could have a negative impact on EU banks' ability to attract investments and enter into business relationships with customers outside the EU. These implications should be taken into account and a balanced approach found.

- BO Identification – Information over the end user

In a new Article 18(2a) the Council position states that where certain services (provided through the business relationship or the occasional transaction) are provided to the end user through other obliged entities, the obliged entity shall ensure that it knows at any moment the identity of the end user and that it can obtain the information identifying and verifying the identity of the end user from the other obliged entities without delay and in any case within no more than five working days. EBIC pleads for a clarification that this new wording is not applicable to correspondent relationships according to Art. 2(19). Otherwise, the

provision of a wide variety of services (partly mandatory under PSD2) would be practically impossible. An approach like this would not take into consideration, that the respondent is an obliged entity itself and has to comply with the requirements of the regulation itself. Additionally, the risk-based approach and the rules for correspondent relationships already cater for an efficient risk-adequate handling of situations like these.

- BO Identification with registers

With regard to Article 18 of the Commission proposal and the identification of the BOs of customers EBIC believes that obliged entities should be able to rely on BO registers; Obliged entities should be able to rely on them fully, so that no further full identification outside the register should be required with regard to the beneficial owner. In this context we welcome the MEP amendments to make sure that "*entities in charge of the central registers verify, at the time of submission of the beneficial ownership information and on a regular basis thereafter, that that information is adequate, accurate and up to date"* and to screen them against sanctions lists. (see draft report (amendment 14) and other MEP AMLD amendments). While this amendment as such does not allow credit institutions to fully rely on the register it is a positive first step toward better data quality, which is a pre-requisite for being able to rely on a register.

3. Politically Exposed Persons (PEP)

In our view it should be clarified that the measures described in Article 32 of the Commission proposal are to be taken exclusively in the context of occasional transactions and business relations with PEPs - for the purpose of a more efficient system - as is already the case elsewhere in the draft, cf. Art. 22 para. 2c.
Moreover, EBIC has concerns with regard to the proposals of the European Parliament (draft report (amendments 26 and 27) and other MEP AMLR amendments) to enlarge the scope of the PEP definition. The extension of the circle of politically exposed persons to include siblings, the heads of regional and local authorities as well as groups of municipalities and metropolitan regions (Art. 2(1)25(a)(viia)) or even to members of the administrative, management or supervisory bodies of enterprises majority-owned by local authorities (Art. 2(1)25(a)(vii) of the Council position) does not represent any added value.
We support the Council's text in Article 2(25) whereby no middle-ranking or more junior officials should fall under the scope of the PEP definition.

4. Outsourcing

Article 40(2)(b)-(f) of the Commission proposal considerably restricts the possibility of overall outsourcing of internal safeguards. This concerns e.g.
- the random and ad hoc checks of the money laundering officer,
- the formulation of the obliged entity's policies, controls and procedures,
- the assignment of risk profiles to customers,

- establishing criteria for the detection of suspicious or unusual transactions and activities; and
- reporting suspicious activities or threshold-related cash transaction reports.

The requirements for the prevention of money laundering and terrorist financing are becoming increasingly complex. Therefore, it is of considerable importance, especially for small and medium-sized credit institutions, to be able to outsource the range of tasks of the anti-money laundering officer or individual aspects thereof as comprehensively as possible to highly specialised and reliable service providers.

Hence, we welcome the Council position in its new Art. 6a, generally allowing to outsource tasks deriving from requirements under the AMLR. Still the suggested prohibition to outsource the reporting of suspicious activities or threshold-based declarations will be an obstacle to a fast and efficient reporting, as there will always be an additional communication necessary. We are therefore very much in favour of also allowing the outsourcing of the reporting of suspicious activities or threshold-based declarations to highly specialised service providers.

5. Reporting obligations and the need for Feedback to Suspicious Activity Reports (SARs)

Last but not least, EBIC and its members have repeatedly stressed the problem with the large volumes of suspicious activity reports (SARs) FIUs receive. On their part, FIUs find it difficult to select the data, with an added value, out of all the volume of the data they receive, especially given the high percentage of false positives or "defensive" SARs. This issue stems from the existing rule-based approach which results in inefficiency and, ultimately, deviation from the overall objective of detecting suspicious criminal activity. Moreover, the newly introduced obligation in the proposed Article 59(4)(b) in the Commission proposal for credit institutions to report payments or deposits above the cash limit of 10 000 euro to the FIU would place additional burdens for both banks and FIUs. This reporting obligation does not appear to be risk-based and further runs against the ambition to reduce the volume of low-value reporting to FIUs. While this provision is aimed solely at credit institutions, we emphasise that there are other transactions that may run money laundering or financing of terrorism risks, including the ones in high-value goods which to a large extent have been excluded from the scope of the Regulation.

In this context, the obligation for FIUs to provide feedback to obliged entities on the SARs received as set out in the proposed AMLD6 is a welcome development. We also welcome proposals made by MEPS to make this feedback individual and targeted (see draft AMLD report, amendment 37). In order to apply anti-money laundering measures efficiently, credit institutions must be able to rely on timely and specific (case-by-case) feedback provided by competent authorities. This is essential for credit institutions to make an assessment/improvement of the IT-tools and procedures. However, the definition of

'suspicion' in the proposed AMLR remains broad and may continue to lead to a significant flow of SARs towards FIUs.

For any follow-up questions please do not hesitate to contact the EBIC AML WG Secretariat (julien.ernoult@eapb.eu).