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Final

EACB position on the proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive 2015/849 (AMLD6)

March 2022

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 214 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 85 million members and 749,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

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Introduction to EACB

The EACB (the European Association of Co-operative Banks) represents those banks in Europe that are based on the cooperative form of enterprise, which collectively serve 214 million customers who are mainly consumers, retailers, SMEs, and communities. Their objective is not profit maximisation but rather shareholder value maximisation, meaning that revenues are acquired to ensure the longer-term stability of the bank in the interest of its members. To achieve this, co-operative banks promote the social, environmental, and economic wellbeing of the communities they belong to. They also have a strong governance model, in which they foresee client influence in policymaking processes. As a result of their model, cooperative banks tend to have a strong physical presence, not only in the economic centres of Europe's Member States but also in more remote areas. This makes them drivers of local and social growth, and major contributors to financial and economic stability by merit of their anti-cyclical behaviour. The main service provided to the retail markets by co-operative banks is the provision of credit – the biggest market share being in consumer loans and mortgage loans.

EACB Comments on the AML Package as a whole

The EACB welcomes the AML Package put forward by the European Commission in July 2021 including the suggestion to create a centralised supervisory authority, the AMLA. The package reflects the demand for a more efficient and harmonised EU AML framework

However, we request that more work is done through level 1 legislation; the AML package hardly contains any concrete specifications but instead authorises either the AMLA or European Commission to issue numerous Regulatory Technical Standards (RTS). In order to ensure a practicable implementation and harmonised application of the provisions of the regulation by the obliged entities, the regulation should already specify the essential obligations. Credit institutions in particular, but also other obliged entities, need this legal certainty to be able to implement obligations in a timely and effective manner. The successive publication of numerous technical standards, on the other hand, considerably jeopardies efficient implementation by the obliged entities.

Secondly, the package leaves the Member States a lot of room for manoeuvre. We request a more harmonised approach to have a truly harmonised EU framework.

Furthermore, it is crucial to take into account the fact that, at least half of the money laundering activities take place outside the financial sector. To ensure an effective AML framework, also non-financial entities must be within the scope of the authorities. If the AMLA only focuses on financial sector participants, the AMLA will only partially reach its goal.

Data exchange between public and private sectors and between private sector operators is essential to combat money laundering. However, the proposals for the AMLR and the new AML Directive insufficiently address data exchange between obliged entities. In order to improve data exchange, which is arguably an essential part of AML efforts, we propose that a European beneficial owners register, and a European Know-Your-Customer (KYC) register are established with uniform standards. A European KYC register would allow banks and other obliged entities to access and use the information stored upon authorisation of the affected customer in order to combat money laundering most effectively. In this context it is required that the obliged entities can rely on legitimate expectations when using the register. A European KYC register should also

comply with the relevant data protection rules. Non-uniform KYC processes cause avoidable burden for cross-border customers and competitive disadvantages for cross-border banks, while AML policy should not serve as competition factor.

At present, the quality of local beneficial owner registers differs significantly across Europe, and they follow different approaches. Hence, the current concept of merely linking such registries is insufficient and does not provide added value if the underlying documents are not stored therein. We would welcome a register that would function as a central platform that is used to store documents required to identify and verify beneficial owners. Such documentation can be used by obliged entities for the purpose of fulfilling due diligence obligations.

Such registers would reduce the costs for the obliged entities but also increase the effectiveness of AML measures.

In view of the increasingly complex requirements for the prevention of money laundering and terrorist financing, it is of crucial importance especially for smaller and medium-sized credit institutions to be able to outsource the range of tasks or individual aspects thereof as comprehensively as possible to highly specialised and reliable service providers. We therefore urgently call to remove the blanket limitation of the possibility to outsource these from the proposal, because they can be fulfilled by outsourcing in a very high-quality manner and at the same time efficiently, without this entailing a loss of responsibility or an impairment of money laundering supervision.

Further, more specifically with regard to Public-Private Partnerships (PPP), apart from its high importance, it must be highlighted that we need harmonised specifications for PPP models to ensure a uniform quality standard (definition of KPIs, adequate resources etc.). With regards to the contents, general information on typologies, and risks etc. guidance should be also provided on exchange of personalised information from FIUs to obliged entities and feedback provided should be improved. Additionally, PPP models should in principle include all obliged entities, but specific PPP models including only banks should be implemented, because the other obliged entities' AML programs diverge significantly; depending on the topic, additional participants from other business segments such as tax consultants should be included in the meetings.

Lastly, the new regulation and the subsequently planned regulatory technical standards on parameters and criteria for AML transaction monitoring should lead to a harmonised approach for transaction monitoring what we welcome. In the next step this harmonisation should serve as a basis for the establishment of a central EU authority, which should take over the monitoring of all EU-wide transactions as well as the role of an EU FIU investigating identified suspicious transactions. As financial institutions see only very limited information about transactions, this measure would dramatically increase the effectiveness and efficiency of AML transaction monitoring. It would be more effective if financial institutions provide transaction data of defined criteria to one EU authority which then monitors and assesses the transactions in consideration of other transaction data provided by other financial institutions. The respective tasks could be taken over by the AMLA or other authorities. Example: A bank in an EU member state filed more than 50 SARs (relating to criminal activities such as drug trafficking and organised crime) to the national FIU based on a request for legal assistance from another member state, but the SARs were not delivered to the respective country that originally requested for the information.

For more detailed observations on the AMLD6, please refer to the section below.

Detailed feedback on the proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive 2015/849

Beneficial ownership registers – article 10, paragraph 6

The legal deadline of 14 calendar days for the reporting of discrepancies is too short and should be prolongated to 28 calendar days.

Obliges entities should generally be allowed to request their customer to rectify discrepancies and not only in case of discrepancies of a technical nature that do not hinder the identification of the beneficial owner(s).

Real Estate Registers – article 16, paragraph 1

It should be clarified that this stipulation refers only to access of competent authorities that is available in registers or systems managed by authorities but does not directly refer to information on transactions executed via obliged entities and does not intend to impose additional obligations on obliged entities with regard to collection and retention of transaction data.

At least for clearing transactions without direct business relationship of obliged credit/financial institutions with the originator or beneficiary, it has to be stated that the credit/financial institutions in general do not receive information whether the transactions involves real estate (unless this information is included in the information on the payment reason).

Access to information – Article 18

With regard to the FIUs, it must be clear whom the credit institutions must provide information and documents to, and that there must be no increased effort here (different requests by different FIUs). As the collection of documents and information is extremely comprehensive and far-reaching, it would therefore be desirable that such requests must be made through the national authority, which then forwards them directly to the credit institutions or information/documents already received.

Suspension or withholding of consent to a transaction and suspension of an account – Article 20

The blocking period of an account for 5 days or suspension of a transaction for 15 days is not feasible in practice. This leads to a delay in the processing of payment transactions and brings credit institutions in particular to a natural "declaration emergency" towards the customer. Such measures require clear information as to what credit institutions can communicate to the customer concerned.

Feedback by FIU – Article 21

Article 21 does not contain an obligation for FIUs to provide specific feedback. Such feedback is necessary to enable obliged entities to improve their suspicious activity reporting practices and thus optimise the overall prevention of money laundering.

The FIU should also be obliged to provide individual feedback on singular suspicious activity reports within a reasonable deadline.