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From:	Joint Supervisory Authorities (ESAs) ESMA, EIOPA, EBA
date of receipt:	31 May 2022
To:	General Secretariat of the Council
Subject:	Joint ESAs Report on withdrawal of authorisation for serious breaches of AML/CFT rules

Delegations will find attached a letter on the subject mentioned above.

The ESAs' full report is available online can be downloaded via this link:

https://www.esma.europa.eu/file/124321/download?token=r_hYnGQO

Encl.

E-MAIL

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Didier Seeuws
Acting Secretary-General
Council of the European Union
Rue de la Loi 175
1048 Brussels
Belgium

Ref: Joint Report on withdrawal of authorisation for serious breaches of AML/CFT rules

Dear Mr Seeuws,

It is our pleasure to submit to you today the Joint ESAs Report on the withdrawal of authorisation for serious breaches of the rules on anti-money laundering and countering the financing of terrorism (AML/CFT rules) which has been developed in accordance with Objective 5 of the Council Action Plan on AML of 2018, requesting the European Supervisory Authorities (ESAs) to:

- a) Clarify the degree of discretion of the prudential supervisors and the criteria for the withdrawal of the authorisation once a serious breach of AML/CFT rules has been ascertained, while taking into account the different practices and legal frameworks in Member States;
- b) Ensure a uniform interpretation of the language referring to serious breaches of AML/CFT rules in the Capital Requirements Directive;
- c) Ensure a consistent consideration of the consequences of licence withdrawal, particularly in terms of the need to preserve critical functions in the bank, the involvement of resolution authorities, depositor protection and the possibility to suspend payment of deposits by the deposit guarantee scheme;
- d) Identify measures available to prudential authorities to address prudential concerns stemming from money laundering / terrorist financing risks and breaches of AML/CFT rules.

The Joint ESAs Report provides a comprehensive analysis covering the whole financial sector on the completeness, adequacy and uniformity of the applicable laws and practices on the withdrawal of license for serious breaches of the AML/CFT rules.

It also advocates for the introduction in all relevant European Union (EU) sectoral legislation of a specific legal ground to revoke a licence solely for serious breaches of AML/CFT rules. It also argues for the inclusion of the assessment by competent authorities of the adequacy of the arrangements and processes to ensure AML/CFT compliance as one condition for granting authorisation or registration.



Furthermore, the Joint ESAs Report clarifies the nature of the decision to revoke the license as last resort measure, subject to a discretionary and proportionality assessment and lays down uniform interpretative criteria of for the notion of serious breaches of AML/CFT rules, pointing out that the identification of a serious breach remains requires a case-by-case assessment by the AML/CFT supervisor.

In addition, the Joint ESAs Report highlights the importance of the appropriate integration of AML/CFT issues into prudential regulation and supervision, including for crypto assets in the Proposal for Market in Crypto Asset Regulation (MiCA), currently under negotiations.

Finally, the Joint ESAs Report provides a preliminary analysis of the interaction between serious breaches of AML/CFT rules and the crisis management and resolution frameworks and the first mapping of operational and legislative criticalities.

The ESAs stand ready to provide any assistance that may be required in the upcoming developments on further harmonisation of EU law on these matters.

Yours sincerely,

Verena Ross
ESMA Chair

Petra Hielkema
EIOPA Chair

José Manuel Campa
EBA Chair

CC: Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs, European Parliament
Bruno Le Maire, French Minister of Finance, President of the Rotating Council of the EU
Tuomas Saarenheimo, Chair of Economic and Finance Committee, Council of the EU
Martin Merlin, DG FISMA, Director Dir D, Bank, Insurance and Financial Crime
Almoro Rubin De Cervin, DG FISMA, Head of Unit D1, Bank Regulation and Supervision
Dominique Thienpont, DG FISMA, Legal Counsellor to Directorate D

Encl: Joint ESAs Report on withdrawal of authorisation for serious breaches of AML/CFT rules