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WORKING DOCUMENT

From: European Central Bank (ECB)
To: Financial Services Attachés
Working Party on Financial Services and the Banking Union (AML)

Subject: AMLA: ECB opinions on the AML/CFT package

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EUROPEAN CENTRAL BANK

BANKING SUPERVISION

ECB opinions on the AML/CFT package

Selected elements of
relevance for prudential
supervision

28/03/2022


ECB Supervisory Board member



1. Introduction

Background

On 20 July 2021, the European Commission published a package of four legislative proposals to **strengthen the EU's AML/CFT rules**

1. A [Regulation establishing a new AML Authority](#) (AMLAR);
2. A [sixth Directive on AML/CFT](#) (AMLD6) including requirements for public authorities at MS level
3. A [Regulation on AML/CFT](#) (AMLR1) including requirements for the private sector
4. A [revision of the 2015 Regulation on Transfers of Funds to include also transfers of crypto-assets](#) (FCTR)

Following the above-mentioned proposal, the **ECB has recently published 3 opinions covering** AMLAR, AMLR1, AMLD6 and FCTR.

Objectives

The following presentation intends to provide an overview of the main points raised in the **ECB opinions**, also with a view to contributing to the points open for discussion in today's meeting, as highlighted in the PCY notes on direct supervision of the financial sector and JSTs, common instruments, general and final provisions, and step-in procedure.

2.1. AMLAR - Supervision

The ECB strongly supports a wider pool of selected obliged entities, including at least one entity per Member State from the beginning

In analogy with the SSM experience, and significance criteria, **AMLA's selection criteria:**

- should be **objective and transparent**, i.e. based on risk indicators rather than risk scores,
- to **avoid a stigma effect on SOEs and MS** or breach of confidentiality and litigation risk.

2.1. AMLAR - Supervision

JSTs are one of the main forms of cooperation between the ECB and the SSM national supervisors and contribute to building a common supervisory culture

While fully acknowledging that AML/CFT supervision may require a different set-up, the ECB would like to share some key features of the JST model in the SSM, which comprises:

- **a coordinator located in Frankfurt**, who is generally not from the country where the headquarter of the supervised entity is located, leads the team and facilitates communication across the institution and the sharing of best practices,
- **national sub-coordinators**, supporting the JSTC and responsible for clearly defined thematic or geographic areas,
- **a team of experts**, composed of enough EU-level staff to achieve effective and consistent supervision.

Further, we think that the dialogue between JSTs and an **independent on-site function** enriches the ECB's supervision.

2.1. AMLAR/D - Supervision

Furthermore, **the ECB is of the view that:**

- **Taking over direct supervision** should be possible also upon request of national authority in line with similar provisions in the SSM and SRM frameworks – the latter provides a precedent, as the SRB is a Commission's agency like AMLA.
- **Potential overlaps of supervisory powers** should be avoided. Where they need to remain, coordination in the application of such powers is suggested.

2.2. AMLAR - Cooperation

The new approach to supervising AML/CFT risks should improve cooperation among all involved

- **AMLA should facilitate cooperation** between both AML/CFT and non-AML/CFT authorities, including prudential supervisors;
- **Efficient and simplified channels of information exchange** are needed between AMLA, national supervisors and the relevant authorities;
 - **AMLA database** shaped as a **central data hub** is key for efficiency of and cooperation in the supervision of OEs;
 - **duplication** of reporting via multiple existing channels **should be avoided.**

2.2. AMLR – Compliance function

- The designation of the compliance manager should not affect the **collective responsibility** of the management body under other Union acts.
- **Input of AML/CFT supervisor into prudential suitability assessments** of ‘compliance managers’ and ‘compliance officers’ is crucial.