The voice of banking

BBA POSITION PAPER ON THE EU PRESIDENCY AND EUROPEAN PARLIAMENT TEXTS FOR THE 4TH EU MONEY LAUNDERING DIRECTIVE

Outline

The BBA has been pleased over the past year to provide representations to UK and EU authorities on the various versions of the proposed 4th EU Money Laundering Directive. This paper seeks to provide an updated view on behalf of our members, given the publication of the European Parliament Report on the proposed Directive and the updates to the proposed Presidency text. This BBA paper has been developed through consultation with our Money Laundering Advisory Panel- this committee brings together senior financial crime representatives across the banking industry and from banks of different sizes and business profiles. As such this paper should be a comprehensive description of the views of the British banking industry.

Firstly we emphasise our support for an updated EU Money Laundering Directive. A new Directive is needed to ensure that EU law is in line with the revised FATF Standards and provides a policy framework that can address emerging money laundering and terrorist financing techniques. The Directive can also bring greater consistency to policies and procedures for AML and CTF across Europe. This is particularly important for our members given many have pan-European business operations. We therefore hope that priority can be given to completing the legislative process for the proposed instrument.

We support many of the measures in the proposed 4th EU MLD, though we have concerns over coherence between the proposed Directive and other EU laws. There are challenges for our members in balancing AML/CTF obligations with requirements on payments processing and financial inclusion. Most fundamentally though, the current EU data protection laws can be a barrier to effective approaches by banks to combating financial crime. Our members believe a more effective balance must be found between the AML/CTF laws and laws for data protection/privacy in Europe for a long term effective framework. We are not convinced that this has yet been achieved.

Issue 1: Correspondent Banking

The BBA has previously outlined concerns over the rather wide definition envisaged for correspondent banking in the proposed Directive. The proposed definition captures business that banks would not intuitively consider to be correspondent banking and where the money laundering risks would not be deemed at the same level as 'traditional' correspondent banking. Our concerns over this issue remain.

In the most recent Presidency text the key issue is the definition of the relationship that is contained within bullet (b):

"the relationships between credit institutions, financial institutions and among credit and financial institutions where similar services are provided, including but not limited to those relationships established for securities transactions or funds transfers."

The core function of correspondent banking is the processing of payments/movement of assets on behalf of one financial institution ("Financial Institution A") on behalf of another ("Financial Institution B") and where Financial Institution B's client has not been subject to Financial Institution A's client identification processes. The risk exists as a result of the third party nature of the payment and the lack of visibility that Financial Institution A has on the underlying client making the payment/transfer. The breadth of the definition in bullet (b), especially the phrase *"including but not limited to"* a correspondent relationship could include any service offered from one credit/financial institution to another credit/financial institution e.g. foreign exchange, commodity trading, equities, lending, structured products, prime brokerage, etc.

To give some idea of scale, a 'mid-size' bank operating globally from its London office could typically have 400 to 600 unique entities that could be defined as a financial or credit institution. Under the current requirements of the proposed Directive that bank would be obliged to:

- Treat all of these entities as high risk;
- Obtain details of the institutions AML/CFT controls.
- Have senior management approve the continuation of the relationship.
- Obtain documentation that details the respective responsibilities of the institution and the 'correspondent'.

It appears that all of these actions would need to be done irrespective of the product risk, country risk or more specific money laundering risks. The concern of BBA members is therefore that the proposed text would require banks to deploy disproportionate financial crime compliance resources in lower priority and lower risk areas.

We recognise that the proposed definition for the Directive is derived from the FATF Standards. However, our understanding is that the FATF Standards set out a high level expectation whereas the proposed EU text will set out a specific and binding legal obligation in European law. This EU legal requirement would in reality go far beyond the actual AML controls applied in this respect outside of Europe. The consequence will be that British and European banks are placed at a competitive disadvantage. The costs of compliance with this requirement could also lead some European banks to consider the risk/reward ratio of some correspondent relationships.

We hope that consideration is given to narrowing the scope of the definition of correspondent banking or incorporating some flexibility to ensure that negative consequences are avoided.

Issue 2- Politically Exposed Persons

The BBA has argued that banks need support for discharging the increasingly resource intensive requirements for due diligence on PEPs, including by access to an official and regularly updated EU PEPs lists. We welcomed the proposal within the Parliament amended text to provide for these. However, we understand that there is little appetite amongst Member States for the introduction of such a list and note it has been removed from the Presidency text. This is disappointing to our members recognise the international political focus on public/private partnership to address the laundering of the proceeds of political corruption. Our member banks are left entirely reliant on commercially provided PEPs information with apparent increasing levels of cost in this respect and significant impacts for our smaller member banks that may have lower levels of resource for financial crime compliance. In addition, the Presidency text has removed any distinction between foreign and domestic PEPs which, along with the deletion of a proposed PEP list, removes the ability for banks to take an appropriate risk based approach as suggested by Recommendation 12 of the FATF Recommendations.

EU member states should provide more information to banks to support compliance with the increased requirements in relation to due diligence on PEPs. At the least a list of relevant functions/categories of PEPs for every Member State would be useful.

Issue 3- Beneficial Ownership

BBA members would welcome tools that would help banks to discharge the new proposed obligations for beneficial ownership checks. It is also vital that there is consistency of approach across Europe. We believe that under the current proposed text, different systems may be put in place, without any connection between existing systems. The Presidency text also removes the right for obliged entities to access this information, only to request it, which makes it difficult for banks to carry out due diligence in a timely manner and independently from the customer. **Given that many BBA member banks operate across Europe and internationally, ensuring interoperability between the national systems in place, and direct access for obliged entities would be a useful tool for entities which represent the largest contributor to the detection of money laundering.**

Issue 4- Role of the European Supervisory Authorities

BBA members recognise that guidance from European Supervisory Authorities could provide benefits in promoting consistency of approach to AML/CTF with the EU. It is though important that a "one size fits all" approach is not promoted that does not allow the necessary flexibility of approach to deal with the financial crime risks faced in a particular location. **The guidelines in our view must be high level in nature to ensure consistency with the Risk Based Approach to financial crime compliance- this could perhaps be made clearer within the Directive.**

Issue 5- Sanctions

BBA members note the Directive sets out potential fines of 10 per cent of annual turnover for a bank and 5 million Euros for a natural person for AML breaches, as well as significant direct liability on bank staff responsible for financial crime compliance. Whilst we recognise the need for sanctions, we do believe that the proposed measures in this respect are disproportionate. **We are concerned that these measures could have negative consequences in terms of promoting an overly "risk cautious" approach to AML/CTF compliance and for the recruitment of high quality staff for senior financial crime compliance positions.**

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