



Introductory statement of the EBA Director of Banking Markets, Innovation and Consumers before the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)

26 April 2018

Introductory statement by EBA Director Piers Haben,
at the public hearing: '*Combat of Money Laundering in the EU Banking Sector*' of the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)

Brussels, 26 April 2018

Dear Chairman, dear Members of the TAX3 Special Committee,

On behalf of the European Banking Authority, I would like to thank you for inviting me to take part in this public hearing.

This public hearing comes at a time when AML/CFT supervision is in the spotlight perhaps more than ever before. The Financial Action Task Force and MoneyVal, in their Mutual Evaluations, question the adequacy of some competent authorities' approaches to AML/CFT supervision; Members of national parliaments, as well as yourselves, are looking into supervisors' responses to various ML/TF scandals and find them to be wanting; and continuing allegations of breaches by financial institutions of applicable AML/CFT rules have led some commentators to question whether a more robust and consistent approach to testing financial institutions' AML/CFT compliance could have prevented these from happening.

These are important questions and observations, which we take very seriously: money laundering and terrorist financing not only undermine the integrity of the financial system but ultimately affect the society as a whole.

What, then, can we do, or should we do, to strengthen checks and controls and reduce ML/TF risks in the EU? And where does the EBA fit into all of this?

I would like to start by briefly outlining our role in relation to AML/CFT. I will then provide you with an overview of what we have already done, and what we are planning to do, to improve the European AML/CFT landscape. And I would like to conclude with some thoughts on how to enhance the effectiveness of the EU's approach to tackling financial crime.

The EBA's role

The EBA is an independent EU Authority. Our objective is to maintain the stability and effectiveness of the EU's financial system. As part of this, we promote sound, effective and consistent regulation and supervision and work to safeguard the integrity, transparency and orderly functioning of financial markets.

We also have a legal duty to foster the consistent and effective application of the Anti-Money Laundering Directive (AMLD).

The EBA's powers

We have a number of tools at our disposal to achieve our objectives. These range from issuing opinions, recommendations or guidelines to drafting legally binding standards, where this is foreseen by EU legislation. We also work to promote the effective implementation of our standards and EU law through training, peer reviews and facilitating the exchange of best practices, among others.

However, our powers to enforce our standards and guidelines are limited: we do not supervise individual financial institutions; and we do not currently have the legal tools to enforce compliance in a way that would compel a competent authority to change its approach. Of course, where we become aware of malpractice or suggestions that a competent authority may be in breach of Union law, we will investigate and, should a breach of Union law be confirmed, issue recommendations. However, these recommendations can only address breaches of union law and cannot make up for weak provisions in Union Law and associated weak or ineffective supervisory practices.

The EBA's AML/CFT work

We work closely with ESMA and EIOPA to have a consistent approach to AML/CFT across the Union's financial services industry. To the extent that this is possible under the AML Directive's minimum harmonisation framework, we work to promote a common supervisory culture and a shared understanding of the rules competent authorities seek to enforce to ensure that financial institutions, with similar ML/TF risk exposures and profiles, are treated consistently wherever they operate in the Single Market. This is important to prevent regulatory arbitrage and to protect the integrity of the EU's financial system: financial crime respects no borders.

To this end, over the last 18 months, we published three opinions, and issued two draft regulatory technical standards and three guidelines that come into force in the course of this year. Once implemented, they will help to bring AML/CFT practices together. For example,

- our risk factors guidelines foster a common understanding of the risk-based approach to AML/CFT. They provide financial institutions with the tools they need to make informed, risk-based and proportionate decisions on the effective management of ML/TF risk and help competent authorities assess whether the ML/TF risk assessment and management systems and controls of EU financial institutions are adequate;
- our risk-based supervision guidelines set out how competent authorities should assess the ML/TF risk associated with financial institutions and how they should reflect that assessment in their approach to AML/CFT supervision; and
- our draft regulatory technical standards on the application of group-wide AML/CFT policies and procedures in third countries establish a more harmonised approach to tackling ML/TF risk where a third country's law places restrictions on obtaining and processing customer data. Such restrictions limit a financial institution's ability to understand who their customers are and can also facilitate tax crimes, as highlighted in the context of the Panama and Paradise Papers.

Another area of focus, which results from our findings in our February 2017 joint opinion on ML/TF risk and our review of competent authorities' responses to the Panama Papers, is the promotion of cooperation and information exchange between competent authorities. Recent revisions to the AML

Directive will bring some much-needed legal certainty in this regard, and we are complementing this through own-initiative work on a framework to structure that co-operation and information exchange and create the conditions for it to be applied in practice. For example, we will expect that competent authorities that are responsible for the AML/CFT supervision of financial institutions that operate on a cross-border basis liaise regularly with their counterparts in other Member States.

These standards and guidelines constitute an important first step on the road towards a more consistent and effective European AML/CFT regime. Going forward, we will concentrate on their effective implementation. They have to be embedded in the AML/ CFT framework in all Member States and applied in practice by financial institutions as well as competent authorities. Over the last year, we already put on three very successful training events for competent authorities on various aspects of the new AML/CFT regime, and more events are planned. Following communications from a number of Members of the European Parliament, we conducted a preliminary enquiry into a potential breach of Union law in one Member State, Portugal, and made a number of suggestions based on our findings; and we are currently conducting preliminary enquiries into two further possible breaches of Union law, in Malta and Latvia. We have also drawn up an AML/CFT strategy that sets out how we will review AML/CFT supervision in a number of other Member States. When prioritising competent authorities for review, we will, of course, take due account of relevant information Members of the European Parliament have shared with us.

Enhancing the effectiveness of the EU's approach to AML/CFT

With the new AML directives and supporting guidelines and standards, we have taken one step towards a more harmonised approach to AML/CFT supervision and strengthening the financial sector's AML/CFT defences, and I believe we are on the right track. However, we are now approaching the limits of the EBA's powers and resources, and the limits of what is possible under the current legal framework.

We have identified three areas where we believe, based on our work thus far, that change is needed if Europe's AML/CFT regime is to be more effective.

- The AMLD's minimum harmonisation and directive-based approach does not eliminate national differences, and limits how much convergence our guidelines and standards can achieve: competent authorities and financial institutions will not be able to comply with our guidelines if national law stands in the way. Divergence of national practices exposes the Union's internal market to significant ML/TF risks, and a necessary first step towards a more effective AML/CFT regime is therefore a move towards greater harmonisation of the EU's legal AML/CFT framework.
- The EU's rules on authorisations and fitness and propriety rely heavily on national transpositions and interpretations. They leave little room for the development of a consistent approach to addressing ML/TF risk effectively in these contexts. Despite guidelines we have issued, concerns remain that some competent authorities think that they are unable to act on ML/TF concerns unless they can find evidence of criminal convictions. This is worrying, because once an individual is approved, or a financial institution is authorised, the passporting process enables them to provide their services across the Union unhindered. It is, therefore, important to re-think the way these legal provisions are drafted to ensure AML/CFT issues are given the attention they need and that competent authorities can intervene where necessary.
- The EBA needs to have the right powers and sufficient resources to take action where necessary to support the correct and consistent application of our standards and guidelines. The power to conduct independent reviews, with 'comply or explain' recommendations - such as the independent staff-led reviews and assessments of competent authorities' activities that are considered in the context of the current ESAs review - if accompanied by the resources needed to undertake such reviews would go some way towards addressing current shortcomings.

If these points sound familiar, this is no coincidence: my colleague, Isabelle Vaillant, made much the same points when she appeared before the PANA committee in October 2016, as did the EBA's chair, Andrea Enria, in communications with the co-legislators when the 5AMLD was being negotiated and in response to letters from several MEPs who wrote to us to share their AML/CFT concerns.

Thank you for your attention.

CHECK AGAINST DELIVERY