



Introductory statement by Adam Farkas,
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Special Committee on Financial Crimes, Tax
Evasion and Tax Avoidance (Tax3 Special
Committee) of the European Parliament
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Introductory Statement of Adam Farkas

Dear Chairman, dear Members of the TAX3 Special Committee,

On behalf of the European Banking Authority (EBA), thank you for inviting me to take part in this public hearing. AML/CFT supervision is in the spotlight. High profile AML/CFT scandals are widely reported and Members of the European Parliament as well the Commission have asked the EBA to review the application of EU law in various jurisdictions amidst continuing allegations of breaches by financial institutions of applicable AML/CFT rules. The Financial Action Task Force and MoneyVal, in their Mutual Evaluations, have also raised questions about the adequacy of some competent authorities' approaches to AML/CFT supervision.

Today, I would like to update you on our work regarding Breaches of Union Law and also to explain our evolving approach to enhancing AML standards across the EU. This is particularly relevant in the context of the ongoing discussions about potential modifications to the ESAs' roles and powers. I wish to highlight that these proposals appear to largely reflect the work we are already doing, but are important as they would confer more appropriate powers and, key for us, resources.

The EBA's role and powers

The EBA's objectives include maintaining the stability and effectiveness of the EU's financial system and promoting sound, effective and consistent regulation and supervision, and work to safeguard the integrity, transparency and orderly functioning of financial markets. To achieve this, we have a legal duty to foster the consistent and effective application of the Anti-Money Laundering Directive (AMLD).

Currently, the EBA has a number of tools at its disposal to achieve these 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 have the legal tools to enforce compliance in a way that would compel a competent authority to change its approach.

Where we become aware of malpractice or suggestions that a competent authority may be in breach of Union law, we do 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.

BUL update

Recently, the EBA has been asked to look into a number of potential Breach of Union Law cases, which we have taken forward, despite significant resource challenges. We launched a preliminary enquiry in Portugal, which was not taken forward but we identified deficiencies, which needed to be remedied. This year, we looked at breaches in the FIAU and the MFSA in Malta. In the latter, we didn't proceed with a formal investigation but listed areas where we would expect to see improvements in practice. In the case of the FIAU, we did find a breach and issued recommendations to address this, which the Commission also followed up on. We currently have ongoing preliminary enquiries into Latvia, Denmark and Estonia, the latter two linked to the same issue of an Estonian branch of a Danish bank.

These investigations take significant time for our AML, legal and management teams but we believe are worthwhile and we will continue to use this tool where needed. However, we would prefer to focus our resources in the future on addressing weaknesses *ex-ante* and working within competent authorities to strengthen their approaches to reduce the occurrences of ML and TF. To that end, we continue to work on our approach to policy development, implementation reviews and training, and risk products.

Ongoing EBA work - Policy development

The EBA, along with EIOPA and ESMA, has been actively working to foster a common approach to risk based AML supervision under AMLD 4 with policy products including:

- Guidelines on AML Risk factors and simplified and enhanced customer due diligence, which provide financial institutions with the tools they need to make informed, risk-based and proportionate decisions on the effective management of ML/TF risk;
- Risk-based supervision guidelines, which 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;
- An Opinion on innovative solutions available for customer due diligence (e.g. non-face-to-face verification of customers' identity; access to central identity documentation repositories).



We are currently reviewing the Risk Factor Guidelines and will review the Guidelines on the risk-based approach next year to reflect implementation experience and any issues arising from our Joint Opinion on ML/TF risks.

To facilitate effective cooperation and information sharing across the EU, we are also developing:

- a cooperation agreement (MoU) between ECB and national authorities;
- own initiative Guidelines on cooperation between AML competent authorities (AML colleges).

The Guidelines clarify practical modalities and set clear expectations that supervisors should cooperate effectively, domestically and on a cross border basis. They also propose the establishment of AML/CFT colleges.

Ongoing EBA work - Implementation

To assist authorities in their effective implementation and practical AML supervision, the EBA has drawn up an AML/CFT strategy to review AML/CFT supervision in a number of other Member States. These reviews of national approaches to AML supervision will help identify weaknesses and best practices in individual jurisdictions and across the EU, allowing us to give early stage feedback to competent authorities. The reviews will also inform the development of policy products and our training offerings, which are an important feature of our ongoing work to foster consistent and robust implementation. In 2018, we provided three major trainings for around 250 EU supervisors and intend to continue the roll out of our training programmes to enhance the quality and consistency of supervision across all relevant EU competent authorities.

Risk identification

Every other year, the ESAs are responsible for a Joint Opinion on AML risks to the EU financial sector and we are currently finalising our second such joint opinion as an EU wide complement to national risk assessments.

AML work going forward

The EBA currently has 1.8 FTE working on AML, and even with support from national competent authorities and EBA management support, our work can at best make a modest difference. Additional resources are vital to take forward this work in a more adequate manner, even under the same structure as at present.



However, I also list our current work plan in the context of the various proposals on the table to strengthen AML supervision across the EU. I will focus on the near term proposals in the Commission communication rather than some of the longer term, institutional and legislative, changes being mooted.

In its September 2018 Communication, the Commission outlined, *inter alia*:

- “resources and expertise currently scattered across the three European ESAs be centralised at the EBA”;
- the EBA to “receive an explicit mandate to specify the modalities of cooperation and information exchange [...]”;
- the EBA to “carry out periodic independent reviews on anti-money laundering issues” and “report to the EU Council, Commission and Parliament”;
- the EBA to “become the data-hub on AML supervision in the Union”;
- the EBA to “carry out a risk assessment exercise to test strategies and resources in the context of the most important emerging AML risks.

The Commission’s proposals are welcome, recognising that these will be subject to debate and change, are welcome. The direction they point to would allow the EBA to continue its work in a more effective way and to improve implementation and coordination with improved resources and legal certainty. In particular, some changes along the lines in the Commission’s communication would allow the EBA to:

- maintain our high standards of policy products;
- assist in better and more consistent implementation via independent reviews, feedback and training to competent authorities;
- strengthen the EBA’s work to foster effective coordination and communication between agencies and jurisdictions;
- strengthen the EU AML risk infrastructure by helping to draw together quantitative and qualitative information at an EU level to complement national risk work.

Conclusion

I see the current steps to improve AML in the EU then as evolutionary rather than revolutionary. As my colleagues have previously told this committee, minimum harmonisation directives mean that national differences will continue to limit how much convergence our guidelines and standards can achieve. Nonetheless, the current proposals to strengthen consistency of implementation, cooperation and information sharing would, if backed by adequate resources, mark a modest but important step forward in improving AML supervision across the EU.