

EPIF response to EBA Guidelines on cooperation and information exchange between prudential Supervisors, AML/CFT supervisors and FIUs

27th August 2021

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).

Consultation

1. Do you consider that the subject matter, scope of application, and definitions are appropriate and sufficiently clear?

EPIF welcomes this EBA Guidelines and we are supportive of the aim of establishing a formal framework to ensure effective cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units thus enabling and facilitating the efficient and effective supervision and coordinated supervisory actions where necessary.

We agree on the importance of identifying synergies between the work of the different authorities and build on these synergies to foster a more effective approach to both, prudential and AML/CFT supervision, while avoiding unnecessary duplications and respecting the autonomy of the different authorities' respective roles, tasks and competencies.

Having consistent guidelines across jurisdictions would improve also the feedback from National/Member State FIUs that is disseminated to obliged entities across a varied spectrum (i.e., informal and formal), which now can appear contradictory to written laws and regulations. Moreover, we believe that the feedback from National/Member State FIUs could be improved insofar as apparent inconsistencies between informal feedback and written guidelines, which can open obliged entities to reputational risk and non-compliance.

We would like to point out that, when filing STRs/SARs to report possible money laundering, terrorism financing, transactions considered to be "suspicious" under applicable law, and other transactions that may be the proceeds of crime, to law enforcement and other government agencies designated to receive such reports, expectations vary greatly by Member State, where some signal mere anomalies, but others suggest only detect well-grounded and substantiated criminal behaviours should be reported.

2. Do you consider that the general provisions are appropriate and sufficiently clear?

EPIF's members operate in Member States where supervisory functions are housed in agencies that are separate from the agencies responsible for analysis of STRs, and in others where the functions are combined. EPIF is supportive of consolidation of AML/CFT supervision into an EU supranational supervisory agency. Such consolidation could leverage resources, help ensure consistent guidance and approaches to firms operating across Europe, and help the European authorities better manage ML/TF risks. It would be further beneficial if a single supervisor were to perform both safety and soundness supervision function and conduct-of-business regulation.

EPIF believes that obliged entities filing STRs/SARs across multiple Member States would greatly benefit from a centralized filing of STRs/SARs to a single contact point in the EU. EPIF's members employ significant resources in ensuring differentiated Member State requirements and expectations (e.g., with respect to subject matter, format, etc.) are met. Standardized formats, thresholds, and a centralized and automated filing system could significantly improve the process for all stakeholders.

EPIF would like to point out that the rollout of this supervisory agency should occur after buy-in from national agencies so that the process does not become more complicated.

3. Do you consider that the mechanisms for cooperation, information exchange and confidentiality treatment are appropriate and sufficiently clear?

For financial institutions like our members who passport into multiple countries, there seems to be some lack of clarity associated with FIUs in countries where they are not registered but are passporting in,

reaching out for information. The FIUs will reach out to them either directly or through our financial partners for confidential information when they cannot share the information with them. What our members would do is either file a SAR with the FIU of the country where they are regulated or ask for a court order but the non-regulated country FIUs do not necessarily understand that and that may be because the mechanisms are unclear.

4. Do you consider that the provisions on cooperation and information exchange in the context of the processes for authorization, proposed acquisitions of qualifying holdings, suitability assessments, and withdrawal of authorization are appropriate and sufficiently clear?

With regard to the timelines for cooperation between the AML supervision and the Prudential supervisor in the context of their respective reviews of the Authorisation Application. The draft Guidelines say (at para. 48) that information requested from the AML supervisor in the context of an application for authorisation of an institution should be provided without undue delay in view of the short legal timeframe for the assessment of such application by the prudential supervisor. Ultimately, the maximum time within which the AML supervisor should respond may need to be more specific than "without undue delay" as this could lead to difficulties in terms of the absolute timeframe the Prudential supervisory authority has in which to make its decision on whether or not to authorise a firm.

5. Do you consider that the provisions on cooperation and information exchange in ongoing supervision are appropriate and sufficiently clear?

On the duty of AML supervisors and Prudential supervisors to share relevant information with one another re sanctions (paras. 87 and 88). It would be helpful if examples could be given on the type of information to be shared as what might be deemed relevant by one supervisor or supervisory team may not be regarded as sufficiently important / relevant by another.

6. Do you consider that the provisions on cooperation and information exchange regarding supervisory measures and sanctions are appropriate and sufficiently clear?