International Banking Federation

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London, 2 November 2021

Dear Madam, Dear Sir,

**Re: EU AML Reform Package**

The International Banking Federation (IBFed)[1] appreciates the opportunity to comment upon the European Commission's AML/CFT reform package.

As you know, IBFed is the representative body for national and international banking federations from leading financial nations around the world. This worldwide reach enables the IBFed to function as the key international forum for considering legislative, regulatory and other issues of interest to the banking industry and its customers. We also have a keen interest in the efficiency of the global tax system.

IBFed supports the Commission's ambition to harmonise national AML/CFT measures through EU-level legislation, guidance and supervision. International regulatory fragmentation has complicated the work of regulators, law enforcement and multinational banking Groups which cannot easily put in place EU-wide AML/CFT programmes. This fragmentation enables criminals to exploit regulatory weaknesses and inconsistencies in one jurisdiction to launder funds and move these around financial markets.

We consider that harmonisation of national requirements for customer due diligence (CDD) and alignment with international best practice on information sharing can support more effective collaboration and better target money laundering and terrorist financing. Examples include support

[1] The International Banking Federation (IBFed) was formed in 2004 to represent the combined views of our national banking associations. The IBFed collectively represents more than 18,000 banks, including more than two thirds of the largest 1,000 banks in the world. IBFed member banks play a crucial role in supporting and promoting economic growth by managing worldwide assets of over 75 trillion Euros, by extending consumer and business credit of over 40 trillion Euros across the globe, and by collectively employing over 6 million people. The IBFed represents every major financial centre and its members' activities take place globally. With its worldwide reach the IBFed is a key representative of the global banking industry, actively exchanging with international standard setters and global supervisory bodies on subjects with an international dimension or with an important impact on its members.

for utilities for KYC and transaction monitoring, and reliable and accessible beneficial ownership registries. However, it is important that EU harmonisation and other reforms are properly targeted to support the risk-based approach and do not mandate additional routine checks and data gathering requirements that go beyond FATF standards and are disproportionate to the vast majority of low risk customers and transactions.

It is important to recognise that the benefits of EU reform would not be limited to initiatives and partnerships within the European Economic Area (EEA). Harmonisation and alignment with international best practice could also facilitate global campaigns against cross-border threats such as grand corruption, human trafficking and the illegal wildlife trade. By aligning with recent Financial Action Task Force (FATF) good practice on digital transformation of the fight against financial crime, EU reform could provide an enabling and inter-operable environment for the exchange and cross-fertilisation of innovative approaches to tackling illicit finance, supporting new technological solutions as well as wider cross-sector collaboration.

It should also be recognised that EU harmonisation is an opportunity to look beyond consistent transposition by Member States and seek to implement international best practice from FATF and other global standard setters for the fight against illicit finance. In this way, EU reform is an opportunity to support the strategic review of FATF and promote EU innovation and implement international best practice.

We provide more specific comments on certain proposals of the AML Regulation (AMLR) and 6$^{th}$ AML Directive (6MLD), below, that have a direct bearing on international regulatory fragmentation and the prospects for harmonisation and inter-operability.

**Customer Due Diligence (Art. 15-41)**

IBFed maintains that the risk-based approach (RBA) is key to the underlying purpose of the AML/CFT regime. The vast majority of business relationships are low or routine risk, which can be mitigated by standard CDD measures to confirm customer identity. Inconsistent Member State implementation of Enhanced Due Diligence (EDD) and other risk-sensitive measures under the AML Directives has weakened the RBA and has undermined the flexibility and discretion of obliged entities to follow their data and develop high-quality intelligence. As such, IBFed welcomes the proposed standardisation of key customer identity information that obliged entities must collect and verify pursuant to Article 18. This would potentially reduce fragmentation and legal uncertainty and could also enable multinational banking Groups to develop more consistent Group-wide policies and processes.

We consider that some of the proposed standardisation of required customer identity information (Art 18) is overly prescriptive and disproportionate as minimum standards, and that further clarification is required to distinguish routine checks from enhanced risk-based measures (e.g. when obliged entities should check for links with family members of managers, directors and those owning or controlling the company; or when it is appropriate to check for commercial activity on the basis of one full year's accounts).

We also welcome the harmonisation of key definitions as part of this important work to address regulatory fragmentation, and consider that the harmonisation should address varied or missing definitions of foundational terms (e.g. 'transaction', 'residency', 'nationality', etc). These definitional variations currently add unnecessary cost and complexity to multinational banking Group's compliance efforts, and unless addressed these inconsistencies will reduce the effectiveness of AML/CFT risk management and undermine the benefit of the AMLR's harmonisation of more specific procedural requirements (e.g. CDD, beneficial ownership, record keeping, etc).

**Beneficial Ownership Transparency (Art. 42-49)**

IBFed welcomes the ambition to standardise data to be collected by obliged entities for establishing beneficial ownership (BO) as set out in Article 44. However, as noted above, we consider that further clarification is required to distinguish routine checks from enhanced risk-based measures.

We welcome the obligation enshrined in Article 45 for legal entities to hold information on their BO and to provide this data to obliged entities to support CDD. We consider that obliged entities should not be left responsible for enforcing this obligation, and that more active, risk-based enforcement by registries and other national authorities will be required. This requires national authorities with defined responsibilities and established capabilities for identifying and taking enforcement against misleading BO disclosures, including Trust and Company Service Providers where relevant.

We also welcome clarification that legal entities would be obliged to provide BO information after creation or change to information (art 44). However, we consider that this obligation to provide updates should include reports to both national registers and obliged entities that the corporate has a business relationship with. We also consider that there should be clarification that this obligation does not apply to publicly listed financial Groups, given existing disclosure obligations.

Harmonisation and national registries could also support FATF good practice on digital transformation, provided that these registries are properly resourced and legally empowered to play an active role in the new EU regime. Centralisation of BO information through national registries with consistent definitions, scope and data formats could support more efficient approaches to gathering, checking

and monitoring BO information. Access to BO registry data would allow FIs to corroborate other data for customer due diligence and other AML/CFT requirements, with real-time access and multiple data sources improving the quality of BO checks and the efficiency of AML/CFT processes. Appropriately managed access to bulk BO registry data could also enable more effective AML/CFT approaches to monitoring, investigations and collective analytics, including through public-private partnerships.

We note that the AMLR does not harmonise requirements on obliged entities to report discrepancies between BO information available in national registries and information gathered during CDD. We welcome the separate proposals of 6MLD to harmonise the format for such discrepancy report, but consider that harmonisation should also address the content, format and accessibility of national registers. In particular, we consider that national authorities should collect BO information independently and with the legal powers and competence to verify the accuracy of information provided and impose sanctions as necessary. This would support a stronger and more consistent EU-wide approach and would justify allowing obliged entities to rely on the BO information gathered and checked in this way.

**Outsourcing and Reliance (Art 38-41)**

We welcome the explicit allowance for performance of CDD by third parties, as enabling multinational banking groups to develop more consistent group-wide policies and processes. However, we consider that the prohibitions on outsourcing of specific customer risk assessment and onboarding are unnecessary and disproportionate, given broader requirements for proper oversight and risk-based escalations for senior management approvals of high-risk cases.

We also welcome the explicit allowance for obliged entities to rely on the CDD of third country financial institutions that are part of EU-headquartered multinational banking Groups. However, we consider that the scope of this reliance should be extended to include third country-headquartered Groups that are regulated and supervised by equivalent AML/CFT regimes.

Likewise, we welcome exemptions from EDD for branches of financial Groups operating in High Risk Third Countries (HRTCs) and future Regulatory Technical Standards (RTS) on geographical risk indicators, but consider that the scope of these exemptions should be extended to include equivalent AML/CFT regimes.

**Reporting Obligations (Art. 50-54)**

We welcome the obligation for Financial Intelligence Units (FIUs) to provide feedback to obliged entities on suspicious activity reports (SARs) and consider that this feedback should be used to develop a more effective, collaborative approach between regulators, law enforcement and obliged entities to the identification and disruption of money laundering and terrorist financing.

IBFed has consistently highlighted that the large volume of SARs that are received by national FIUs make it difficult to identify high value intelligence and exploit this in a timely manner. This issue stems from the existing rule-based approach which results in inefficiency and deviation from the overall objective of detecting suspicious criminal activity. The high percentage of false positives are partly due to legal barriers preventing different firms from sharing risk indicators to test and refine their intelligence picture.

IBFed notes that difficulties may arise in responding to requests for information from FIUs under Art. 50 (1) within the set deadline of 5 days, or 24 hours in urgent cases. We consider that guidance on such information requests should be developed in partnership with obliged entities to learn lessons from different national projects for SARs reform and to avoid unintended consequences.

Moreover, we consider that the proposed obligation in Article 59 (4) (b) for credit institutions to report payments or deposits above the cash limit of 10 000 euro to the FIU would place additional burdens for both banks and FIUs. The scope of permitted payments or deposits on 'the premises' of credit institutions is also unclear and does not reflect the diversity of EU credit institution services and operations. We again consider that guidance should be produced in partnership with obliged financial institutions, as this reporting obligation does not appear to be risk-based and further runs against the ambition to reduce the volume of low-value reporting to FIUs.

**Data protection (Art. 55-57)**

From an international banking perspective, it is clear that information sharing is key to a more effective AML/CFT regime. We therefore welcome the Commission's ambition to ensure more balanced interactions between the AML/CFT framework and the General Data Protection Regulation (GDPR).

We welcome the proposed clarifications in the AMLR regarding processing of sensitive personal data, including biometrics, and to criminal prosecutions and convictions. These clarifications appear helpful and are a positive example of how EU-level clarification can harmonise national approaches and support more efficient and effective cross-border efforts by obliged entities.

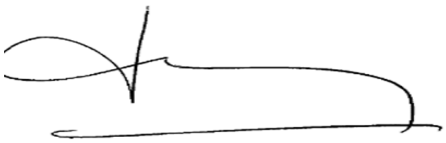
However, we are concerned that the AMLR does not appear to provide a harmonised legal basis for further processing of personal data for AML/CFT purposes, with appropriate procedures to safeguard confidentiality, prevent unnecessary processing and observe the GDPR principle of data minimisation. We note and support the parallel consultation on AML/CFT information sharing via Public-Private Partnerships, but consider that a clearer legal basis and basis for consistent interpretation is required for more routine AML/CFT compliance and risk management by obliged entities. We recognise and support the observation of the European Banking Authority that inconsistent approaches among Member States have created challenges for both national authorities and FIs, undermining the effectiveness of Group-wide controls and leading to blind spots in national authorities' risk assessments and intelligence pictures.

We consider that the Commission should address these challenges by explicitly providing for the processing of personal data for AML/CFT purposes. AML/CFT and the public policy goals of data privacy are not mutually exclusive and should be balanced to help protect customers and society from illicit finance, including data privacy abuses such as identity theft and account take-over. AML/CFT goals serve significant national security and public interest objectives and should be pursued vigorously, but should also be pursued in a manner that balances an individual's rights to protection of personal data and privacy.

In particular, EU rules on AML/CFT and on data privacy should be aligned to support operational data sharing by FIs with other obliged entities and public sector partners. This would support more effective, intelligence-led approaches including public-private partnerships and innovative technological solutions such as utilities for KYC and transaction monitoring. EU-level harmonisation would also support more effective responses to cross-border threats, including multi-national utilities and collaboration between both national-level and regional-level public-private partnerships.

We hope that our contribution is useful and would like to thank you for taking our input into consideration.

Yours sincerely,



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