

Fourth Anti-Money Laundering Directive: Amending Proposal

On behalf jointly of the Association for Financial Markets in Europe (AFME) and the British Bankers' Association (BBA) we write with regard to the 4th Anti-Money Laundering Directive (4AMLD) and the accompanying proposal for an amending Directive (the Proposal). As you are aware, the European Commission Proposal put forward on 5 July 2016 aimed to strengthen the previously agreed 4AMLD. Our detailed thoughts on some of these measures are set out below at Annex A. Overall, we are aligned with the objectives and the general direction of the Proposal. However, there are some measures where we have considerable concerns as regards unintended consequences, or the opportunity cost is significant, jeopardising the desired outcome and implementation of the Proposal.

We highlight our and our members' commitment to the aims of the 4AMLD and the Proposal. The aim to strengthen our collective ability to detect, disrupt and prevent organised criminals and terrorist financing is something that has to be a high priority for all Member States. Given the nature of global financial flows, the integrity of our financial system is only as strong as its weakest link.

We must however draw a clear distinction between the measures introduced in the 4AMLD, and the subsequent measures introduced in the Proposal. For the former, whilst we retain reservations about the practicality over how some of them will be implemented, there has at least been detailed consideration and scrutiny of each measure. For the measures in the Proposal, although we understand the pressure from context and circumstances, the time constraints under which the impact assessment was undertaken misses the opportunity to tailor the measures to be efficient, proportionate, and effective in tackling the threat of terrorism.

The growing public-private partnership across Europe between banks and law enforcement to tackle money launderers and terrorist financiers is the right approach. However, we need to ensure that the expectations imposed on the financial sector are sensible and deliverable.

The main point that our members would like us to reinforce, and which has been raised by others including the European Banking Federation (EBF) is the need for swift clarity on timing and detail of implementation. Implementing 4AMLD and the accompanying Proposal will require substantial changes to policy, standards and processes, and investment as well as significant changes to IT systems. Implementing by July 2017 will already pose considerable operational and logistical challenges especially as the detail of the Proposal is not settled. It would be near impossible if the Proposal were to bring the implementation date forward. Moreover, we would like to emphasise the close link between the implementation of the Proposal and the Amendment to the Directive on access to anti-money-laundering information by tax authorities (DAC), since the latter can only be fully implemented if the Proposal is also approved. Therefore, the transposition date of both Directives should be aligned.

We also have very serious concerns, as set out below, about the requirement for a Central Bank Register (CBR), both as to the principle and effectiveness of such an approach. We know

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that we and our members are not alone in these concerns which are shared by other European Trade Associations, including the EBF.

We remain at your disposal for further discussion on any of the points raised herein. Please contact John Thompson (john.thompson@bba.org.uk) of BBA and Will Dennis (will.dennis@afme.eu) at AFME.

Thank you for your consideration.

Yours truly,

Will Dennis
AFME

John Thompson
BBA

Annex A

The Proposal included the following measures to:

Bring virtual currency exchange and platforms under the scope of 4AMLD

- We support the EBF's view which welcomes the inclusion of virtual currency platforms under 4AMLD as well as the focus on electronic ID&AV.

Minimise the use of anonymous payments through pre-paid cards

- We recognise the need for this, but share the EBF's technical concerns over the difficulties of reusing transactions from pre-paid cards issued in non-KYC compliant countries, not least the limitations on being able to identify their cards. This needs to be resolved.

Allow full public access to the beneficial ownership (BO) registers at EU level

- We recognise and share the concerns of the Council Legal Services over public access to beneficial ownership given that it is personal data and protected by European Law.

Lower the threshold for beneficial ownership for passive corporate entities

- We share the EBF's technical concerns about the difficulties and burdens that arise from lowering the threshold for identifying Beneficial Ownership for Passive Non-Financial Entities (PNFE) from 25% to 10 %.

Establish and provide access to FIU on centralised bank registers

- Our most pressing concern on a Central Bank Register (CBR) is that we believe there should be recognition that in some Member States there are more effective and balanced ways of delivering the same results whilst better respecting data protection regulation across the Member States. We also urge you to consider the EU Data

Protection Directive 95/46/EC (DPD) (and the General Data Protection Regulation (GDPR)) and implementing legislation that places strict controls on the processing of personal data in order to ensure that both the Proposal and the GDPR are compatible, particularly with regards to suggestions of automation. Our members cannot be placed in the position of complying with the Proposal and breaching the DPD or GDPR.

- The issue of flexibility and proportionality is important as any CBR in any Member State would by necessity be very large, creating a database in the hundreds of millions in some Member States. Any database holding the personal and commercial details of that many customers would contain data would be very quickly out of date as well as quickly becoming a target of choice for hackers, criminals and terrorists. The scale of the Panama Papers leak starkly demonstrates the risks inherent to storing large amounts of data in one or a few places.
- Banks will need legal certainty, not least given the GDPR, that they can share the customer data but also that after providing the data, they will not be held accountable in the event that that the data is lost, damaged, or compromised.

Harmonise the EU approach towards high-risk third countries with an EU list

- We have concerns about proposed amendments to Article 18 – the requirement for enhanced due diligence on high risk countries. A blanket requirement on countries alone as opposed to transactions would be impractical and in essence lead to de-risking. We support ideas that that an EU list of high risk countries be a guiding list as opposed to imposing rigid requirements. Banks need to be able to respond quickly to changing events where a threat is identified, and we need to avoid de-risking of countries.

Accelerate the deadline for transposition in national law to 01/01/2017

- As set out above, none of the planning, the roll out and training or the implementation and embedding can be achieved quickly, or without sufficient clarity on the Proposal. We welcome calls for sufficient time to implement correctly. There is a lead in time for IT changes, recruiting staff (if required) to address heightened Enhanced Due Diligence (EDD) expectations, and dialogue with 3rd parties who supply Politically Exposed Persons (PEPs) lists and other tools. There is the need for alignment with Group requirements for those who have a footprint elsewhere in the EU. Implementing by July 2017 will pose considerable operational and logistical challenges, and if the Proposal does go ahead we suggest deferring to at least July 2018.

Annex B – about AFME and BBA

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association



(ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

The BBA is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It has over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. Eighty per cent of global systemically important banks are members of the BBA, so as the representative of the world's largest international banking, cluster the BBA is the voice of UK banking.

Our members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses. BBA members include banks headquartered in the UK, as well as UK subsidiaries and branches of EU and 3rd country banks. The BBA is registered on the EU Transparency Register, registration number 5897733662-75.

