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By email

Directorate-General for Financial Stability, Financial Services and Capital Markets Union
European Commission
Brussels
Belgium

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Re: Public Consultation on the Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing

Dear Sirs

In relation to the Public Consultation on the Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing (“the AML Action Plan”), I would like to take this opportunity to advise that the Central Bank of Ireland (“the Bank”) is supportive of the initiative to further harmonise and strengthen the EU’s Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) Framework. Having reflected on the AML Action Plan, the Bank would like to provide some comments focussed on areas of relevance to the Bank’s AML/CFT mandate.

The Bank is the national competent authority for the monitoring of compliance by credit and financial institutions with their AML/CFT obligations. Additionally, the Bank contributes to the work of the Financial Action Task Force (“FATF”) and the European Banking Authority’s (“EBA”) Anti-Money Laundering Standing Committee (“the AMLSC”). The Bank, as a member of the AMLSC, has contributed to the EBA’s response to AML Action Plan.

This letter sets out the Bank’s high-level views on the aspects of the AML Action Plan that are directly relevant to the Bank’s AML/CFT mandate. The Bank’s observations on the AML Action Plan are as follows:

Section I- Ensuring the Effective Implementation of the Existing EU AML/CFT Framework

Over three decades, the EU has developed a solid AML/CFT regulatory framework, which has been augmented in recent times by the introduction of 4AMLD and 5AMLD (together “the AMLD”) and the increased mandate of the EBA. The Bank recognises the threat posed to the EU’s financial system by any fragmentation of and/or failure to apply the existing legal framework and we are therefore supportive of the work being carried out by the EBA and the



European Commission in assessing Member States' implementation of 4AMLD. The outcome of these assessments will provide valuable insights into the specific aspects of 4AMLD that have not been adequately implemented and that may therefore benefit from harmonisation, strengthening or clarification.

Section II - Delivering a Reinforced Rulebook

What provisions of the AMLD should be transformed into a Regulation?

As stated above, the Bank is supportive of steps taken to harmonise and/or strengthen the EU AML/CFT Framework, where evidence suggests there is divergence caused by national transposition and/or differing national approaches to AML/CFT supervision. The outcome of the EU Commission's review of Member States' implementation of 4AMLD, and the EBA's review of the effectiveness of National Competent Authorities' approaches to AML/CFT supervision, should assist in informing the specific areas of the EU's AML/CFT Framework which would benefit from harmonisation, strengthening or clarification. The Bank would further note that it is of vital importance that any move towards harmonising the EU's AML/CFT Framework by means of a directly applicable Regulation should not be at the expense of the risk-based approach, which is a foundation stone of the EU's AML/CFT Framework as enshrined in the AMLD. In addition, it is the Bank's view that greater harmonisation must not result in any lowering of supervision standards and, where necessary, individual Member States must retain the ability to introduce additional AML/CFT requirements, over and above what is contained in the Regulation.

We have set out below the Bank's preliminary views on what provisions of the AMLD would benefit from being transformed into a Regulation:

(1) *Structure and tasks of supervision*

The Bank is supportive of the Commission's stated aim of ensuring high-quality and consistent supervision across the Single Market. While recognising that a more robust approach to AML/CFT supervision across Member States with clear powers and duties for competent authorities would result in reliable, comparable and achievable supervisory outcomes, any harmonisation of the structure and tasks of AML/CFT supervision must retain appropriate levels of discretion for National Competent Authorities to exercise supervisory judgement where necessary. It will also be necessary to ensure that the new harmonised supervisory powers are set out in a manner that is easily applied by a single supervisor to all Member States. The Bank is of the view that in order to achieve the effective harmonisation of supervision there must first be a harmonised and well-understood framework for AML/CFT. Therefore, we are of the view that the harmonisation of the AML/CFT legislative framework must precede the harmonisation of the supervision of compliance with the framework in order to be effective.

(2) *Customer Due Diligence measures (CDD)*

The differences in the national transposition of the AMLD's CDD requirements appears to have resulted in divergent expectations of financial institutions' CDD obligations by National



Competent Authorities, which may in turn have resulted in regulatory arbitrage. The Bank is therefore supportive of measures that would harmonise CDD requirements throughout the EU.

To mitigate against the risk of money laundering (ML) and terrorist financing (TF), CDD must go beyond the mere identification and verification of a customer's identity and must instead provide a holistic view of the customer. Recognising this and the potential for greater effectiveness through technology advancements, the Bank is of the view that greater harmonisation of CDD measures should not result in an overly prescriptive approach and that any future CDD requirements should:

- i. Be sufficiently flexible to cope with customers who cannot provide more common forms of identification, thereby facilitating financial inclusion;
- ii. Be applied in a risk sensitive manner that results in a comprehensive understanding of the ML/TF risks associated with individual business relationships;
- iii. Be technologically neutral while at the same time being capable of facilitating technological innovation.

(3) Internal Controls

To effectively mitigate ML/TF risks, firms must not focus solely on compliance with a set of prescribed procedures. It is essential that firms put in place systems and controls to identify, assess, monitor and manage the ML/TF risks to which they are exposed. The Bank therefore supports any measures that seek to build on the existing requirements in respect of AML/CFT systems and controls and internal governance. In this regard, the Bank is of the view that any future requirements in respect of AML/CFT systems and controls should:

- i. Be proportionate to the nature, scale and complexity of a firm's activities;
- ii. Where appropriate to the size and nature of the business, should require firms to allocate to a sufficiently senior member of the management body, ultimate responsibility for the firm's AML/CFT systems and controls and internal governance;
- iii. Articulate the role and responsibilities of parent companies and the steps they must take to ensure the effective implementation of group-wide AML/CFT policies and procedures; and
- iv. Ensure that senior management receive timely, informative and objective information in relation to the AML/CFT risks facing the firm.

(4) Reporting Obligations

Effective cooperation between the financial intelligence unit ("FIU"), law enforcement authorities, supervisors and other relevant competent authorities is central to a well-functioning AML/CFT Framework. The Bank recognises that a lack of such cooperation can result in situations where information and intelligence vital to combatting ML and TF is not shared and consequently, not acted upon. The Bank therefore welcomes the proposal to impose an explicit legal duty on FIUs, law enforcement authorities, supervisors and other relevant competent authorities to cooperate and exchange information that is relevant to the AML/CFT



supervision of obliged entities subject to compliance with the requisite confidentiality and data protection standards.

In this regard, the Bank is also supportive of placing an obligation on FIUs to share with competent authorities their assessment of the quantity and quality of individual financial institutions' suspicious transaction reports ("STRs") as well as their comparative analysis of STRs by type of financial institution. This information would be invaluable in assisting competent authorities to concentrate their finite supervisory resources on those financial institutions whose reporting is out of line with that of their peers or otherwise gives rise to concern.

(5) Sanctions

The Bank is of the view that holding firms to account for weaknesses in their AML/CFT frameworks through timely and impactful enforcement outcomes is a vital weapon in the fight against ML and TF. In arriving at a decision as to the appropriate sanction to impose, the Bank considers all of the sanctions available to it and ultimately imposes the sanction or sanctions, which best reflect the seriousness of the conduct to be sanctioned. In deciding on the appropriate sanction, the Bank will have regard to factors such as the nature, seriousness and impact of the breach, the conduct of the regulated entity after the breach, the previous record of the regulated entity as well as the need for credible deterrence.

Divergent approaches to enforcement action in respect of AML/CFT breaches across the EU can result in regulatory arbitrage, particularly in circumstances where in some Member States there may be negligible financial penalties/sanctions arising from AML/CFT breaches.

The Bank therefore welcomes any developments that seek to ensure a consistent approach is taken across all Member States in respect of AML/CFT breaches. While supporting a move towards greater consistency in respect of enforcement actions, the Bank would caution against the creation of a prescriptive list of breaches that must in all cases result in enforcement action. While acknowledging the need for breaches of AML/CFT to be met with dissuasive action, the Bank is also very aware that enforcement action may not in all cases represent the best use of a National Competent Authority's regulatory tool kit. Therefore, the Bank is of the view that any future requirements in respect of enforcement measures for AML/CFT breaches must be flexible enough to allow competent authorities to exercise their judgement, on a case by case basis, as to when it is necessary to take enforcement action for breaches of AML/CFT requirements.

Should the list of obliged entities be extended?

The Bank notes the proposal contained in the AML Action Plan that the AMLD should be extended to an increased number of entity types. The Bank is of the view that the decision to expand the scope of the AMLD to any additional entities should be based on a thorough risk assessment and should clearly be justified based on the ML/TF risks associated with these entities.



In relation to Virtual Asset Service Providers (“VASPs”), the Bank is of the view that the Commission should put in place a robust authorisation/registration regime for VASPs that is consistent with the FATF Standards, and that the additional categories of VASPs identified by FATF should become obliged entities.

The Bank is also of the view that the establishment of a mandatory public register of EU authorised/registered VASPs will support the identification of VASPs who are obliged entities under the AMLD.

Other EU rules that require clarification in the context of AML/CFT rules

The Bank agrees that in some instances there appears to be an inconsistency between the EU AML/CFT Framework and interaction with other EU rules.

In particular, it is the Bank’s view that the Commission should explore the best way to achieve a common approach among Member States, National Competent Authorities and obliged entities for processing personal data for the purposes of the AMLD. The proposed clarification of the relationship between GDPR and AML/CFT requirements is very welcome. We are of the view that a clear legislative statement is required in order to ensure that compliance with AML/CFT requirements, on the part of obliged entities, is not negatively impacted by a lack of clarity in respect of the interaction between the GDPR and the AMLD.

It is the Bank’s view that the Commission should extend the Wire Transfer Regulation to apply to VASPs, thus ensuring that EU Member States can comply with their obligations under FATF’s Recommendation 16 in a consistent manner.

In relation to the Deposit Guarantee Scheme Directive, the Bank is of the view that the Commission should take this opportunity to provide clarity on the responsibilities of different authorities, with regard to AML/CFT, particularly where a Deposit Guarantee Scheme is making payments.

Section III - Bringing about EU-Level AML/CFT Supervision

What entities/sectors should fall within the scope of EU supervision for compliance with anti-money laundering / countering the financing of terrorism rules?

The decision as to which entities and sectors should fall within the scope of the Single European Supervisor should, in our view, be based on an analysis of the ML/TF risks posed by the entities and the sectors, in line with the Risk Based Approach to AML/CFT enshrined in EU law and the FATF Standards.

In order to create a framework of supervision that eliminates weak points in the current European AML/CFT Framework, the Bank believes that in the first instance all credit and financial institutions should be included in the mandate of the Single European Supervisor. The decision as to which credit and financial institutions should be subject to direct supervision by the Single European Supervisor, and which should remain under the direct supervision of

National AML/CFT Competent Authorities must be based on an analysis of the ML/TF risks posed by such institutions, in line with the Risk Based Approach.

The Bank acknowledges that the issue of bringing the Designated Non-Financial Business and Professions (“DNFBPs”)¹ into the scope of a Single European Supervisor is much more complex. FATF’s MER process has consistently shown that the level of understanding of ML/TF risk and the AML/CFT obligations necessary to mitigate this risk, is of a lower standard in DNFBPs than in financial institutions. One of the indicators of this is the low level of STRs that DNFBPs submit to law enforcement agencies, despite the fact that such entities can often be impacted by high ML/TF risks. In addition, the FATF MER process has demonstrated that the AML/CFT supervision of DNFBPs is often of a lower standard than that of financial institutions. FATF has specifically stated that the supervision of VASPs should not be carried out by Self-Regulatory Bodies (“SRBs”) – this appears to be explicit recognition that the AML/CFT supervision by SRBs has not been of the expected or required standard. Accordingly, the Bank is of the view that despite the challenges involved in centralising the supervision of the DNFBP sector, such an approach is vital in order to eliminate weak points in the current European AML/CFT Framework.

Given the complexities involved in supervising a sector which comprises such varied business models, the Bank suggests that an incremental approach should be adopted, whereby priority is given to DNFBPs operating on a cross-border basis in sectors that present the highest ML/TF risk, following a thorough risk assessment in line with the Risk Based Approach. This will allow the Single European Supervisor the necessary time to develop the skills, knowledge and infrastructure required to supervise a sector that has heretofore been subject to varying degrees of oversight.

What powers should the EU supervisor have?

The Bank acknowledges that EU AML rules and supervision do not appear to have been applied consistently across Member States despite the fact that all Member States are subject to the AMLD. The recent AML scandals in the EU involving credit institutions and the findings of the European Commission’s Post Mortem all point to the need for increased oversight in the application of EU AML/CFT rules.

The Supranational Risk Assessment compiled by the European Commission sets out the ML/TF risks that apply to the EU as a whole, with Member States’ National Risk Assessments highlighting the ML/TF risks that apply to each Member State. While ML and TF do not respect borders, it is important to recognise the idiosyncrasies that exist in each Member State because of the individual nature of each Member State’s financial, political and tax system that must be considered in any assessment/oversight of ML/TF risk.

¹ This category includes casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, accountants, and trust and company service providers



In this regard, national AML Supervisors are aware of the specific risks that exist in their Member State, and have experience in examining the robustness of obliged entities' AML/CFT frameworks in respect of these specific risks. Accordingly, it is vital that in any future centralisation of AML/CFT supervision that national AML Supervisors continue to have a key role in the supervisory framework. Therefore, the Bank is of the opinion that a hybrid structure, that has a centralised entity that drives consistency, provides thought leadership, possesses the necessary powers for effective supervision and that can harness both the local knowledge and supervisory experience of the National Competent Authorities, is the best structure to achieve the aim of better and more consistent application of AML/CFT supervision.

However, the Bank would advise that in moving to this structure that the lessons learned from the establishment of the Single Supervisory Mechanism are considered in the design of any hub and spoke model for AML/CFT supervision.

How should the entities subject to direct supervision by the EU supervisor be identified?

It is the Bank's view that the methodology for identifying directly supervised entities should be based on an assessment of the ML/TF risks inherent in the entities' business models, thereby taking into account that smaller entities can sometimes pose higher levels of ML/TF risk than larger entities, depending on the services being provided, type of customer, jurisdictions in which it operates etc. The methodology should be based on the inherent ML/TF risks posed by the entity as opposed to its size and/or systemic importance.

Which EU body should get the role?

As stated above, the Bank is supportive of the establishment of a hub and spoke model of AML/CFT supervision to improve supervisory oversight and to ensure a more consistent application of AML/CFT supervision across Member States. The Bank's key concern is that whichever authority is charged with this role is capable of building and maintaining a culture of high quality AML supervision that raises standards throughout the EU.

Section VI - Strengthening the International Dimension of the EU AML/CFT Framework

The Bank notes the proposal in the Action Plan in relation to a possible increased role of the Commission in representing the European Union at FATF, with a first step being enhanced coordination among the Commission and Member States so that EU representatives voice co-ordinated positions at FATF.

The Bank acknowledges that in circumstances where a new Single European Supervisor is actively involved in the supervision of obliged entities, such Single European Supervisor would have to be involved in an EU Member State's MER process from a supervisory perspective. In addition, such a Single European Supervisor may have important contributions to make at FATF's Evaluations and Compliance Group's MER discussions, particularly to ensure that the



supra-national nature of the EU's AML/CFT Framework is acknowledged and reviewed in a consistent manner by FATF in relation to all EU Member States.

The Bank further acknowledges that it is important for the EU to have a co-ordinated voice on issues common to all EU Member States in FATF discussions. However, it is important that EU Member States also retain their voice at FATF in relation to policy and law enforcement matters, given that national knowledge of ML/TF risks is required in such discussions.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Dermot Conboy".

Director General – Financial Conduct