

The European Commission's proposals on tackling money laundering - providing powers is only one piece in the puzzle

Introduction

The EU has acknowledged publicly that anti-money laundering (AML) supervision has failed too often across the EU and that it is only as strong as its weakest link.

With money laundering and terrorist financing techniques becoming ever more advanced (and virtual currencies bringing new opportunities to criminals), there has been a clear recognition of the need for European institutions to tackle this issue.

Against this backdrop, on 12 September 2018, the European Commission unveiled new proposals for strengthening powers of EU institutions for tackling this serious crime which can undermine the integrity of financial services. The announcement clearly acknowledged that money laundering remains an issue that needs to be addressed, notwithstanding the steps already taken at both EU and national level to date, saying: *“Despite...strengthened legislative framework, several recent cases of money laundering in European banks have given rise to concerns that gaps remain in the Union’s supervisory framework.”*

Although unlikely to bring an end to money laundering, it is hoped that the powers suggested in the latest proposals will significantly improve the situation both on an EU level and outside the EU.

We take a look at the EU’s proposed changes and how, as is hoped, they may be effective in driving the change that is needed.

The proposals

Central to the proposals is providing a measure of ownership to the European Banking Authority (EBA), providing it with the power to ensure *“effective cooperation and convergence of supervisory standards.”* Having seen the existing system, in which responsibility for supervision and enforcement is at Member State level, fail to be effective, an important step is suggesting that the EBA is *“entrusted specifically”* with some important functions.

The proposals are, in broad terms, aimed at:

1 - providing the EBA with the tools to take on a co-ordinating role in the EU's supervision around money laundering. It is envisaged that the EBA would become the "*data-hub*", collecting information on AML supervision throughout the EU, developing common standards, monitoring market developments and co-ordinating communications.

2 - ensuring that breaches of AML laws are consistently investigated at a national level. For example, the proposals, if implemented, would allow the EBA to request that national authorities investigate potential material breaches and consider appropriate sanctions.

Some have suggested the centralised powers contained in these proposals are long overdue. Certainly, recent examples of failures across the EU have shown that in order to tackle AML issues effectively and efficiently, a consistent approach is needed at the EU level, rather than relying on action at national level. There is a clear need for a single authority to take the lead in ensuring co-ordination between Member States, which the proposals seek to address. This is a positive development, but questions remain.

Under the proposals, Member States suspected to have taken a more lenient approach to AML and/or have national laws, or enforcement authorities, which are not up to scratch (recent cases in Estonia and Malta perhaps best highlight this point), will need to answer to the EBA. This step should operate as a fundamental deterrent to those targeting criminal activities through particular Member States.

Data collection and analysis will be key. The EBA's function of collating experience, techniques and information from national authorities and, in effect, sharing these throughout the EU will be a powerful tool. A similar approach to information sharing has already benefited areas such as security intelligence.

Key Challenges

The European Commission's latest proposals to fight money laundering are to be commended. However, experience to date suggests that simply providing the EBA with powers that **should help with this fight are not likely to be enough in isolation.**

The EBA, which currently has (the equivalent of) 1.8 full-time staff members working on AML issues will have to ensure that it has a workforce large enough (and capable enough) to effectively use the proposed powers. There is a stated intention to increase this resource, which is an important step. Having powers

in place to tackle criminals engaged in money laundering is one thing, being able to effectively utilise those powers is quite another.

Brexit

Finally, it is impossible to consider this EU-wide initiative to tackle money laundering without mentioning Brexit. While there are so many unknowns about what the UK and the EU will look like post-Brexit, one thing seems certain: in a post-Brexit world, effective AML initiatives in Europe will benefit from, arguably require, the complete buy-in from the UK. The reverse is similarly true. It can be in no country's interests for laundered money to be able to easily pass throughout UK or European financial institutions.

This sentiment is perhaps best encapsulated by the European Commission's own comments: "*Deficiencies in the current system can only be addressed if all stakeholders act swiftly and in close concertation. Political commitment from all sides and at all levels will be essential if the strategy...is to be successfully implemented.*" If the UK is not aligned with the EU post-Brexit on this issue, the gaps that the European Commission has referred to can only widen.

There is still a long road ahead in the fight against the issue of money laundering across Europe, and beyond, however the sensible proposals from the EU are a notable and positive step forward in its efforts to tackle the issue.

By Chris Warren-Smith, white collar crime and enforcement partner and Paul Mesquitta, associate in London at law firm, Morgan Lewis.

**First published on Thomson Reuters Regulatory Intelligence on 2nd October 2018*