



Speech by Jose Manuel Campa,
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Committee on Economic and
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Introductory statement by the EBA Chairperson Jose Manuel Campa

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

The EBA's role

1. The EBA is an independent EU Authority. Our objective is to maintain the stability and effectiveness of the EU's financial system. In this, we have a legal duty to foster the consistent and effective application of the Anti-Money Laundering Directive (AMLD). Significant progress has been made so far, despite our limited resources and powers and the minimum harmonisation legal framework. Going forward, we intend to do even more to lead, coordinate and monitor efforts by EU authorities to tackle money laundering and terrorist financing (ML/TF). But we need to be clear that tackling ML/TF is a complex task and we also need to look at the EU's current framework critically to identify any adjustments needed to fully limit the scope for the EU financial system to be used for ML/TF.



The EBA's current AML/CFT powers

2. The EBA, currently with ESMA and EIOPA, already has a number of tools at its disposal to achieve its objectives. Since 2016, the EBA has published three guidelines, two draft technical standards and five opinions in the area of anti-money laundering and countering the financing of terrorism (AML/CFT). In addition, the EBA is currently working on two guidelines and one opinion, which will be published shortly. To the extent possible under the AMLD's minimum harmonisation framework, we also work to pursue effective implementation and promote a common supervisory culture and practices through training, staff led implementation reviews and facilitating the exchange of best practices, among others. We also work to promote a common understanding of ML/TF risks across the EU through the publication of Joint Opinion on ML/TF risks.
3. The EBA's powers to enforce its standards and guidelines, and to promote convergence, are, however, limited. Of course, if we become aware of malpractice or suggestions that a competent authority may be in breach of Union law, we investigate and, should a Breach of Union Law (BuL) be confirmed, issue recommendations. Such recommendations can only address breaches of Union law and cannot make up for weak provisions in Union Law and associated weak or ineffective supervisory practices at national level. Moreover, the BuL process is complex and the burden of proof heavy. Therefore, we need to consider how we can best use our full range of both *ex ante* and *ex post* implementation tools to facilitate and encourage effective implementation whilst ensuring responsibility for effective supervision sits with the relevant authorities.
4. In recent years, the EBA has developed a good understanding of the problems related to AML/CFT in the EU through its policy work, staff led implementation reviews, BuL investigations and direct engagement with AML/CFT supervisors. We have shared our experience and lessons learnt with the EU Commission, which I see fairly reflected in the Commission's recent post mortem report¹. We thus tend to share the views in the post mortem report about AML/CFT challenges in financial institutions related to ineffective systems and controls, governance, notably at group level, and the mismatch between risk appetite and risk management. In relation to competent authorities, whilst we have observed good practices as they build up their risk based approaches, we also see:
 - a. Differing and sometimes inadequate mandates, organisation and resources;
 - b. Differing national approaches to supervision and associated effectiveness of supervisory measures;
 - c. Often limited supervision of financial institutions operating on a cross border basis;
 - d. Differing enforcement powers and cultures.

¹ [https://europa.eu/rapid/press-release MEMO-19-4369_en.htm](https://europa.eu/rapid/press-release_MEMO-19-4369_en.htm)



5. To address these challenges requires a concerted effort and some steps have been taken already. For example, at level 1, successive revisions to the AMLD further support risk based approaches to AML/CFT controls and supervision, encourage better coordination, clarify roles for cross border supervision and bring the legislation up to date for new technology. The EBA, with the other ESAs, has supported these changes, inter alia, through the publication of:
- a. Risk Factors Guidelines to provide financial institutions and competent authorities with the tools they need to make informed, risk-based and proportionate decisions on the effective management of ML/TF risk;
 - b. Risk-Based Supervision Guidelines to help competent authorities assess the ML/TF risk associated with financial institutions and how they should reflect that assessment in their approach to AML/CFT supervision; and
 - c. Our nearly completed Supervisory Cooperation Guidelines, which will provide a framework for cooperation and information exchange between AML/CFT and prudential supervisors through the creation of AML/CFT colleges. These guidelines will complement the Multilateral Agreement we provided to support the ECB's engagement with AML/CFT authorities².
6. The EBA is also supporting effective implementation through trainings and through a multi-annual programme of implementation reviews of each EU authority with tailored and private feedback at authority level, and thematic lessons learnt reports for wider consumption.
7. In addition, we are continuing our work towards the implementation of the Council Action plan on AML/CFT³. We have already taken concrete steps to improve coordination between AML/CFT and prudential supervisors by issuing a reminder to the industry that AML/CFT risks also have a prudential dimension⁴. We are also working on mapping and improving the way prudential supervisors consider relevant ML/TF risks. On the basis of this work, the EBA will amend its guidelines on internal governance, the guidelines on SREP and those on the assessment of suitability of board members and key functions to provide additional guidance on the ML/TF risks.
8. Furthermore, we are also working on finding common ground to the withdrawal of authorisations where serious AML/CFT breaches are identified. Going forward, CRD5 has explicitly recognised the link between AML/CFT and the prudential framework. It requires that competent authorities consistently factor money laundering and terrorist financing concerns into their relevant supervisory activities and inform accordingly AML/CFT authorities as appropriate.

² <https://eba.europa.eu/-/esas-announce-multilateral-agreement-on-the-exchange-of-information-between-the-ecb-and-aml-cft-competent-authorities>

³ <https://www.consilium.europa.eu/media/37283/st15164-en18.pdf>

⁴ Opinion of the European Banking Authority on communications to supervised entities regarding money laundering and terrorist financing risks in prudential supervision, published on 24 July 2019, available at: <https://eba.europa.eu/documents/10180/2622242/Opinion+on+Communication+of+ML+TF+risks+to+supervised+entities.pdf>



9. Finally, with our limited resources, we have responded to a number of requests from members of the European Parliament to investigate specific suspected cases of money laundering. These include events in Malta, where we found a breach of Union law and issued recommendations to relevant authorities, and events in Estonia and Denmark where past deficiencies in effective supervision and coordination were identified but no breach of Union law was found. I also note the request by some MEPs for the EBA to investigate potential breaches relating to dividend arbitrage schemes. To address this, the EBA, in coordination with ESMA, is currently investigating the extent to which these schemes are potentially linked to ML and/or whether there are governance issues within banks. Our investigations are based on information gathering at technical level from all EU AML and prudential authorities as well as high level EBA board discussions on the topic. We will be formally responding to the Parliament when our enquiries are concluded in late 2019.

The EBA's future AML/CFT role

10. The recent changes to the ESAs regulation give the EBA some more powers and tasks. The changes are modest but meaningful. Under the new EBA Regulation, the EBA is required to lead, coordinate and monitor efforts to strengthen AML/CFT measures across the single market. This is mainly a strengthening of existing tasks with some additional resources. But there are some new tasks such as establishing an EU wide AML/CFT database, performing risk assessments on competent authorities, and, when required, asking authorities to investigate and consider taking action on individual financial institutions. To achieve this, we have been allocated a further eight staff over the next few years to supplement our existing team of three, but I very much hope this will be supplemented by at least a further five staff, and we have requested such.

11. To take our new role forward the EBA will:

- a. continue to lead policy development and sharing of best practices through our regulatory products and training;
- b. build on our cooperation and information exchange guidelines by promoting further cooperation and coordination between AML/CFT and prudential supervisors, including in colleges and with third countries;

We will also build an effective EU database of AML/CFT information to coordinate better information sharing with all competent authorities around the EU thereby promoting better informed and coordinated risk based approaches;

- c. Enhance our monitoring of implementation, for both effectiveness and convergence. We will continue individual implementation reviews and undertake thematic peer reviews, as well as risk assessments of individual authorities. Where we have some information that action is needed, we will ask competent authorities to investigate and if needed, to consider taking action. Where they do not, we will



continue to use our powers to investigate any breaches of Union law as and when needed;

- d. Continue to strengthen the link between AML/CFT and prudential supervisors. We will further enhance the SREP guidelines to better capture AML/CFT risks and develop a common assessment methodology for granting credit institutions' authorisation.

Remaining challenges

12. In recent years, we have seen a significant change in public perception of the need to tackle ML and TF risks in the European financial system. And we have seen competent authorities improve their risk based approach in line with the successive changes to the AMLD and the associated ESA's supporting guidelines and standards. The EBA is supporting these changes with our regulatory products, through assistance provided as a result of implementation reviews and training and by facilitating information flows. However, these changes may not be sufficient.
13. The AMLD's minimum harmonisation and directive-based approach does not eliminate national differences, and limits how much convergence our guidelines and standards can achieve as the competent authorities and financial institutions will not be able to comply with our guidelines if national law stands in the way. Divergence of national practices exposes the Union's internal market to significant ML/TF risks,
14. A move from a Directive to a Regulation based framework would help address such divergences and is arguably a prerequisite to more centralisation, if so desired. Short of regulation, a more concrete set of supervisory powers, jointly with more prescriptive common guidelines for sanctions of AML/CFT activities, analogous to the approach taken in the CRD for prudential supervision, would also help. Nonetheless, in the near term, we could see some improvements in areas as such as supervisory cooperation and risk-based supervision where new mandates, similar to that for prudential supervision, could empower the EBA to issue legally binding standards to ensure cooperation, joint risk work and associated decisions in AML colleges. We could also establish a common risk assessment methodology for AML supervisors, as we have done in our 200 pages of prudential supervisory review Guidelines. Finally, more harmonised national approaches to Customer Due diligence (CDD) may help as inconsistent approaches across borders are frequently identified as stifling innovation, and increasing the costs of cross border operations.
15. The changes to the EBA regulation are a useful step forward but the EBA will not be a supervisor of supervisors. Whilst we welcome a few extra people, and a limited number of extra tasks and responsibilities, one cannot expect the EBA to alone ensure a fundamental change in the system as a whole. We know that individual jurisdictions are moving at different paces and in different directions as they adopt their risk-based approaches, and seek to bolster their AML/CFT supervisory capacity. Standardised risk-based methodologies, CDD requirements, and better cooperation and information sharing between competent authorities are needed, along with a



further push at European and national level to ensure resources, knowledge and the impetus to act are strong across the single market.

16. With these evolutionary improvements, the current system of minimum harmonisation implemented at national level needs to demonstrably deliver effective and comparable application of AML/CFT rules by competent authorities and consistent outcomes. It is too early to judge the outcome but the risks of not reaching expectations for an EU harmonised and effective supervision is high. If not, then further centralisation, preceded by an AML/CFT Regulation, may be the only way to ensure a truly European approach to preventing the single market from being used for the purposes of ML/TF to ensure comparable approaches, consistent outcomes and full accountability for relevant authorities.