ACCA IRELAND

AML/CFT AS AN OPPORTUNITY AND THREAT TO IRISH FINANCIAL SERVICES

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A ROUNDTABLE DISCUSSION ON THE PROPOSALS FOR THE ESTABLISHMENT OF A DEDICATED EU ANTI-MONEY LAUNDERING AND COUNTER TERRORISM FINANCING (AML/CFT) REGULATOR. YOU CAN LISTEN TO THE RECORDING VIA THIS LINK AND USING THE PASS CODE JCS?+31J

ACCA Think Ahead

STEPHEN KENNY, CHAIRPERSON OF ACCA IRELAND'S FINANCIAL SERVICES NETWORK PANEL

On 6 April 2022, I was delighted to chair a roundtable discussion on the opportunities and threats for Ireland arising from the European Commission's proposal to implement an EU single rule book for AML/CFT and to establish a dedicated EU authority to directly supervise higher risk firms and bring about greater coordination of national supervisors. Europol estimates that about 1% of the EU's annual GDP is involved in suspect financial activity. Financial institutions can be unwitting facilitators of money laundering, and it is therefore right that they must have robust processes and controls in place to reduce the risk. It's also right that they are subject to a robust regulatory and supervisory framework.

The roundtable received presentations from Minister Sean Fleming and Raluca Prună of the European Commission on the new proposals, the government's support for the sector and its approach to negotiation. This was followed by a rich and robust discussion from a panel of experts in the area of AML/CFT compliance. A number of key policy approaches and recommendations were proposed by the panel. These included education and training, collaboration, access to certain government databases, and that smaller entity requirements should be proportionate but dovetail with the rules for larger entities.

The overall conclusion was that the EU Commission proposals were likely to result in increased expectations and consequently increased compliance costs but represent a significant opportunity for Ireland to look to become a leader in AML/CFT compliance and attract additional high value fintech and regtech employment.

RALUCA PRUNĂ, HEAD OF THE FINANCIAL CRIME UNIT IN THE EUROPEAN COMMISSION'S DIRECTORATE GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Raluca Prună noted that there have been a number of prominent cases of money laundering in the EU and instances where the existing AML/CFT rules were not being implemented correctly or were ineffective. She said that this has encouraged the EU to implement a package of measures, which she outlined in some detail. The new measures are broken down into three pillars: a single EU-wide rule book; EU-level supervision; and a support and cooperation mechanism for the sharing of intelligence. The proposals will be implemented using four pieces of legislation: an AML regulation; an AML directive; a regulation establishing an AML authority; and a recasting or revision of the transfer of funds regulations.

Prună compared the proposal for a single rule book to the EU supervision of banking where there is a single regulator. The single AML/CFT rule book will detail who is covered and the rules, policies and procedures required by these obliged entities. The rules will cover customer due diligence and third countries, beneficial ownership and other matters. The directive includes provisions on national and EU-level risk assessment and information exchange between financial intelligence units (FIUs) in each country. There are also proposals to extend the scope of obliged entities to include crypto-asset service providers and crowd services providers falling outside the scope of the EU Crowdfunding Regulation. In respect of accountants and other professionals, it was noted that there would be no material change and public oversight over self-regulated professionals would continue.

In terms of supervision, regulations establishing a new EU AML Authority (AMLA) will be put in place. AMLA will have two main objectives: direct supervision of very large entities and coordination of AML/CFT in the EU, where there will then be a common rule book and supervision approach. AMLA will not replace the national supervisors but will directly supervise some of the largest and riskiest entities, indirectly supervising the other obligated entities through the local supervisor. AMLA will also allow better cooperation between FIUs. The initial proposal is for the AMLA to have 250 staff, 100 of whom will work on direct supervision duties.

The proposals are due to come into effect in 2024 and direct supervision of the bigger entities will commence in 2026. This delay will be caused by the need for a set of regulations to be published by AMLA prior to the commencement of supervision.

Prună said that the provisions will not be more difficult to comply with for obliged entities and will bring more clarity. She noted that the new requirements will not take a tick-box approach, that it will be about identifying and addressing risk. She acknowledged that smaller obliged entities will a have a lower risk and lower compliance costs compared with higher risk larger entities.

SEAN FLEMING, MINISTER OF STATE AT THE DEPARTMENT OF FINANCE WITH RESPONSIBILITY FOR FINANCIAL SERVICES, CREDIT UNIONS AND INSURANCE

Minister Fleming outlined the growth and employment achievements in the financial services sector. He noted that Ireland was a top-tier global location of choice for specific specialist areas such as sustainable finance and fintech. The importance that the government saw in this sector was reflected in the fact that there was a dedicated minister in the area. Some of the supports available were outlined, including continuing investment in education with a dedicated education programme to support the financial services sector. The minister noted the importance of fintech, commenting that ‘finance will not exist in the future without fintech’. The advantage that Ireland has in terms of both access to the EU and UK talent pools was also noted. Sustainability finance was identified as an area where opportunity for growth exists. The minister said that the government was a strong supporter of sustainable finance and that the sustainable roadmap sets out the policies that have been adopted for this area. He noted that ‘sustainability is good for business as well as being good for the planet’. The minister added that he was updating the financial services plan and invited individuals and companies to contribute to that process.

Minister Fleming said that the government welcomes the proposals for a single EU AML/CFT regulator and the enhancement to the rules, as well as the benefit of having a single rule book. He identified that there were issues with respect to Irish common law compared to the civil law systems in the rest of Europe, when it comes to the imposition of directly applicable EU regulations.
Minister Fleming said the Central Bank will continue to be the significant regulator for most entities. The minister concluded that Ireland will remain a location of choice for international financial services either for their entire operation or for the AML/CFT operations. His priority now was to ensure that the EU maintains a first-class AML supervisory regime.

ROUNDTABLE DISCUSSION

THE ROUNDTABLE PANEL ENGAGED IN A WIDE-RANGING DISCUSSION LED BY A SERIES OF QUESTIONS POSED BY THE CHAIR.

EXPECTED COST IMPACT OF THE PROPOSALS

The panel universally expected the new EU supervisory framework to both change and increase standards with potentially a consequent increase in compliance costs. It was also noted that for entities now struggling to comply, there will be a need to 'double down' to meet the new requirements. A number of panel members noted that there are a lot of subtle – and some not so subtle – differences in approaches to AML/CFT monitoring across the EU (notwithstanding that every country is working off the same underlying directives). A common approach to regulation and enforcement across the EU was suggested as being an opportunity to reduce costs.

One delegate explained that sometimes the same data needs to be extracted in different ways for each regulator from one single data warehouse. In their opinion, reducing this to one report for one EU regulator, or one common report to many local regulators, had the potential to offset an increase in costs due to the imposition of more stringent rules.

Some concern was expressed that the national regulators would not be coordinated with the EU one. There was universal agreement that the rules locally and at EU level needed to be the same, and for local regulation of smaller entities to dovetail into the EU regulation of larger entities.

On the topic of the cost of AML/CFT regulation in general, there was a need expressed to have a more mature view on risk assessment processes and less willingness to accept automated tick-box reports. Delegates noted that there was an unwillingness to 'throw people at the problem' and that there is now a move towards achieving automated solutions to manage costs. There was also a move away from periodic customer due diligence and towards continuous monitoring using technology, only using human intervention when there is a need to do so. In addition, it was thought that there is a need to look at the effectiveness of the spend and whether financial services entities are getting a return on the compliance spend in terms of detecting laundering.

Continuing the topic of the cost of AML/CFT in general, one delegate talked about how important it is to have proportionality and risk taken into account. They commented: 'Proportionality and a risk-based approach is the key to both managing cost and lowering the overall risk of the financial institution.'

A theme developed by one delegate was that of mutual cooperation by obliged entities. They hoped for an environment where the financial services businesses would compete fiercely for customers but cooperate extensively on AML/CFT. A call was made to require collaboration and not competition in the AML/CFT area.

It was noted that the cohort of entities that may be directly supervised was still not known and could be as small as 20 across the whole EU. Clarity is also awaited on how the EU will delegate supervision of non-directly supervised institutions to the local supervisors. There is an expectation that the initial transfer from local to centralised supervision will result in a significant set-up cost and an increased ongoing operating and reporting cost.

One delegate called for a 'compliance-by-design' approach using the '4 E's': engagement, engineering, education and enforcement. In their opinion there was too much engineering and enforcement, and not enough engagement and education.

All delegates expected that costs would increase overall under the new arrangements.

POSITIVE ASPECTS TO THE PROPOSALS

The issue of having the same directive implemented slightly differently in every EU country was discussed at length. Some efficiency in costs was expected based on there being just one regulator, but those gains were expected to be offset by increased overall requirements.

A single supervisor was seen as being an attractive proposition for many firms trading across borders. However, it was noted that over the past two years it has been shown that centralised functions can be located anywhere in the globe and therefore even with the right incentives, obliged entities may not physically locate a centralised team in Ireland, although the function may be managed in the country. It was noted that AML centralised functions can be located anywhere or be completely decentralised. The delegates did not expect a big-bang movement to one jurisdiction, but they could envisage a slow movement towards one jurisdiction as team members change and are replaced. There was some concern expressed by one delegate that there may be additional scrutiny from a supervisor where an obliged entity's whole AML function is centralised. However, there was general agreement that a skilled English-speaking workforce along with a single rule book will make Ireland attractive as a centralised AML compliance location.

The need for further investment in fintech and regtech (regulatory compliance technology) was raised a number of times. The general feeling was that Ireland is behind the curve on fintech. Comparison was made to Luxembourg, which is considered to be far ahead of Ireland in the area of fintech, and there was a call for Irish entities to cooperate with each other. It was also noted that other countries, such as Singapore, had 'endless funding' for regtech and fintech.

It was noted that there is piecemeal and confusing regulation of AML/CFT in Ireland. Certain entities are regulated by the Department of Justice, some by the Central Bank and others by professional associations. The advent of a single regulator was seen as a rationalisation of the current processes but it was unclear how the supervision would work after AMLA was formed.

The difficulty in recruiting skilled teams to operate an AML/CFT function was mentioned. This led to a discussion on the need for training designed by the sector to meet their specific needs. There was a call for the government to continue to emphasise and encourage workplace training and upskilling. The need for cross-training in compliance and IT, and to continually update skills, was also discussed.

There were multiple calls for the obliged entity to be allowed access to government databases for instant verification of identification documents, which is available in other jurisdictions – for example, driving licence and passport databases.

In conclusion to the discussion on the positive aspects to the proposals, there was expected to be an initial increase in the cost of AML/CFT compliance caused by the EU Commission proposals. However, if the 27 national regulators adopted an identical compliance requirement and monitoring approach to the new EU Authority, cost savings could be achieved in the long run.

WILL SMALLER ENTITIES BE DISADVANTAGED?

It was recognised that there is a cost to having different processes for different-sized entities. However, there may be different technology solutions for different sizes of obliged entities. It was noted that the small entity rules need to be proportionate.

The criteria for deciding who will be directly supervised will be set at EU level, and it is expected that this will not be based on PRISM. However, the number of entities under direct supervision cannot be too large, given that there are only 100 staff earmarked to undertake this supervisory work.

POLICY RECOMMENDATIONS

THE SINGLE REGULATOR

- There should be a single rule book for every obliged entity, enforced and interpreted in the same way by the new EU authority and national supervisors.
- The rule book needs to be proportionate and risk based.
- The smaller entity requirements need to be proportionate but also dovetail with the rules for larger entities.

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- There should be more cooperation among obliged entities, with information and technology sharing led by and required by the supervisor.
- Infrastructure such as Government support for compliance is required to make Ireland a centre of excellence, including the encouragement of fintech and regtech development.
- Targeted education should be designed for the obliged industry, properly accredited and widely available.
- Obliged entities should be granted suitably controlled access to government databases to allow instant and reliable verification of identification documents.

The conclusion was that the EU Commission proposals represent a significant opportunity for Ireland to look to become a leader in AML/CFT compliance and attract additional fintech and regtech employment.

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