NEWS

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EU Officials Pitch Expanded AML Oversight Role for European Banking Authority

By Koos Couvée

The European Union's executive branch outlined a plan Wednesday to strengthen the role of the European Banking Authority, or EBA, in ensuring national regulators promptly and effectively take action against financial institutions that violate anti-money laundering rules.

In a 12-page memorandum, the European Commission told the European Parliament, the European Council and the European Central Bank that recent scandals involving banks in the European Union have exposed wide variances in how EU nations enforce rules against money laundering and terrorist financing, and require "quick and decisive action."

The Commission expressed particular concern over "delayed and insufficient" actions to ensure better management of AML risk and more cooperation between AML and prudential regulators, and decried a lack of "common arrangements" for EU and non-EU authorities to interact.

EU officials should respond, according to the Commission, by allocating more resources to the EBA, an independent agency that primarily oversees prudential supervision across the European Union and currently has just two staff members covering AML-related issues.

The Commission's plan proposes granting the EBA new powers to "request" that national regulators investigate suspected AML violations by banks under their supervision, and consider monetary penalties and other "targeted actions" in response.

The plan would also newly authorize the EBA to "address" breaches directly if a national regulator fails to act, but the EU agency would still lack the power to assess penalties unilaterally.

EBA officials would carry out periodic reviews of national supervisors, draw up money-laundering risk assessments, and create a "hub" for collecting financial-crime data and enabling exchanges of the information between EU national regulators under the plan, which still requires the approval of EU lawmakers and nations.

According to the plan, the data hub would also help advance cross-border money laundering investigations with non-EU countries.

If adopted, the measures would increase the likelihood of enforcement actions against banks caught violating AML rules, said Anna Bradshaw, an attorney at Peters & Peters in London.

"From a prudential-regulation perspective I would expect efforts to be focused on identifying the real troublemakers, such as where criminal groups are infiltrating the ownership of a bank … but clearly these initiatives will result in increased sensitivity throughout the banking sector," Bradshaw said.

Recent months have seen the EBA already assume a more prominent role in AML oversight.

In July, the agency reported that Maltese regulators had fallen short of addressing their previous failure to supervise Pilatus Bank for AML purposes, four months after U.S. officials arrested and accused the lender's chairman, Ali Sadr Hashemi Nejad, of helping Iran evade sanctions.

Latvia's Financial and Capital Market Commission is still under EBA scrutiny for potential failures in the supervision of ABLV Bank, formerly the country's third-largest lender, after U.S. officials proposed designating the institution a "primary money laundering concern" in February.

Fresh challenges

Filling gaps in the European Union's AML regime and staunching cross-border flows of illicit cash have become a top priority for the bloc in the months following the proposed designation, which triggered a run on the bank's deposits and ultimately forced it into liquidation.

More recent disclosures of AML failures at Pilatus Bank, Denmark's Danske Bank and the Netherlands' largest bank, ING—which last week agreed to pay Dutch authorities a record €775 million in penalties—have heaped even more pressure on the bloc to act.

Peter Oakes, former director of enforcement and AML at the Central Bank of Ireland, told *ACAMS moneylaundering.com* that if the plan takes effect, financial institutions can expect scrutiny of their AML programs by the European Central Bank and other EU-level authorities.

Banks should respond by identifying "gaps in the current management information-reporting mechanism and potential gaps in policies and procedures," Oakes, now a consultant with CompliReg.com in Dublin, said. "Those will have to be remediated."

Robert Dedman, former head of enforcement at the Bank of England's Prudential Regulation Authority, said that banks already suspected of AML violations may face new demands to increase their capital reserves if prudential and AML supervisors interact more frequently.

"It's important to do [a detailed assessment] anyway, but it's generally done in the context of frontline AML work," said Dedman, now a consultant with Navigant in London. "That information is now going to be more intensively looked at by prudential supervisors … group compliance will want to get a very clear line of sight on what's happening in country."

Wednesday's memorandum follows a confidential Aug. 31 "reflection paper" in which Commission officials proposed assigning EU prudential supervisors, including the EBA, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, a greater role in supervising financial institutions for AML purposes.

The document, published last week by German MEP Sven Giegold, recommended that supervisors clarify the circumstances under which banks could have their licenses revoked for AML violations, as well as other enforcement measures currently available to prudential regulators.

The Commission stressed in the paper that national regulators enter into a formal arrangement with the European Central Bank by January 2019 to exchange "quality" information on money laundering risks. The ECB directly supervises the 120 largest lenders in the European Union for prudential purposes.

EU officials in the longer term may strengthen bloc-wide AML rules through regulation, a move that would mark a significant departure from the current practice of issuing directives that list minimum standards nations must adopt.

The confidential paper raised the possibility of an EU-level AML supervision and enforcement agency, an option backed by the ECB and several EU lawmakers. But the plan published Wednesday only proposes "conferring specific AML supervisory tasks" to an unspecified EU agency in the long term—a less ambitious tack.

"The Commission has no excuse any more to kick the dirty can along the road," Giegold, the German MEP, wrote in an email to *moneylaundering.com*. "To combat money laundering effectively, Europe needs a European anti-money laundering authority."

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