

Draft Minutes of the Meeting of the Expert Group on Money Laundering and Terrorist Financing (38 th EGMLTF) 9 February 2023
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In attendance :

- **AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK**
- **COM, EP, EC, EEAS, EBA, ECB, EFTA, Europol**

Thursday 9 February 2023

1. Introduction

- **Adoption of the agenda.** The agenda was presented and adopted.
- **Adoption of the minutes of the 37th EGMLTF meeting.** One Member State (MS) reached out to ask whether COM would draw up a non-paper on the impact the ECJ judgement of 22 November.

The Chair clarified that COM does not plan to share any non-paper and will tackle this issue as part of trilogue negotiations for the AML package.

No other comments were received. The minutes were adopted.

Head of Unit D2 chaired the meeting.

2. Information points

- **Deliverables under the current AML legal framework and AML/CFT Action Plan**
 - **Article 65 report**

As regards the report requested by Article 65 AMLD, COM has finalised the evaluation of replies received from EGMLTF and AMLSC members. COM has also received input from EBA and ECB services. Based on this input, together with other sources like the CoE study, COM has drafted a report of around 15 pages. To provide further detail, this report will be accompanied by a Staff Working Document which will only be available in English. It will contain background information which COM is now in the process of selecting and redacting.

One MS asked if it holds for the Staff working document that it will not contain country-specific information but only background information. COM confirmed that question.

- **Consolidated list of politically exposed persons (PEPs)**

COM has assembled the single list of prominent public functions as foreseen in Article 20a(3) of Directive (EU) 2015/849, based on lists submitted by Member States indicating the national prominent public functions as well as the prominent public functions at the international organisations accredited on their territories and on the list of Union functions compiled by COM and adopted with Commission Decision in May 2022. This single list has been translated in all 24 official languages. At the moment, COM is in the process of adopting a Commission Decision empowering the Commission to publish the single list. Once this Decision has been adopted, the single list will be published in the Official Journal of the European Union, which should take place in Q2 2023.

- **EBA AML database**

- The formal adoption procedure of the RTS on the AMLD database is underway. The RTS has been prepared by the EBA and after several rounds of exchanges between COM and the EBA, an amended draft RTS was submitted to the EBA Board of Supervisors for information in June 2022. Having considered that the changes do not constitute a change to the policy or legal content of the draft technical standards as approved by the Board of Supervisors, the EBA confirmed that it would not object to the Commission proceeding to endorse the technical standards with the proposed changes.
- On 15 September 2022, COM launched an interservice consultation on the draft Commission Delegated Regulation, which ended on 6 October 2022 and resulted in comments from DG JUST and the Legal Service, which were duly taken into account.
- As the establishment of this database also entails an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, COM has consulted the European Data Protection Supervisor and received comments from the EDPS in response to the formal consultation on 24 January. COM is currently discussing how best to address these comments with our data protection coordinator and EBA services.
- The next steps are that the RTS has to be translated and adopted by the College through written procedure.
- As the RTS is a delegated act, the adoption process foresees that, after the adoption by COM, the RTS has to be submitted to the European Parliament and Council for their non-objection (period of 3 months, which can be extended by another 3 months at the initiative of the European Parliament or the Council in line with Article 13 of the EBA Regulation).

- While EBA has already launched the the AML/CFT central database (Eureca) on 31 January 2022, no personal data will be collected until the adoption of the RTS.

- **Enforcement**

- **State of play of Commission's assessments of the transposition of AMLD5**

All MS were late in the communication on the transposition of AMLD4. Two cases were given a judgement by the ECJ in 2020. Currently, 25 MS have adopted a complete transposition of AMLD4.

On the transposition of AMLD5: After the deadline of January 2020, COM prepared 16 letters of formal notice to refer incomplete or absent communication from MS. Only 2 of these cases are still open now.

- **Follow-up to EU Pilot on BO**

COM is in the final stage of assessing replies to the EU Pilot on the functionality of the BO register. COM will discuss the results bilaterally with each MS. All the Pilot requests are assessed on their own merit and COM will then take a decision with the appropriate follow-up, depending on the assessment.

3. Preparation of FATF Working Groups and Plenary meetings

- **ECG**

- **MER of Qatar**

The mutual evaluation of Qatar and key issues for discussion by ECG were presented.

- **MER of Indonesia**

The mutual evaluation of Indonesia and key issues for discussion by ECG were presented.

- **Quality & Consistency (Q&C) issues**

ECG will discuss a quality and consistency issue in relation to the rating of R15.

- **Sequence of the FATF 5th Round of Mutual Evaluations**

COM presented the sequencing of the next round of FATF Mutual Evaluation. The rules in the AML package will become applicable in the middle of the next round. The same will happen for Moneyval's evaluation.

- **Joint ECG & GNCG**

- Formula for Minimum Contributions of Human Resources
- FSRBs' Preparation for the Next Round of Mutual Evaluations
- Preparation for the next round of mutual evaluations

COM presented the formula for Minimum Contributions of Human Resources and the FSRBs' Preparation for the Next Round of Mutual Evaluations.

One MS raised concerns about need to revisit the anticriteria of the ICRG. COM answered that it was supportive of the fact that many MS are engaged in joint groups, especially in the last round, but agrees that there is a conversation to have on this topic.

One MS made a remark about the fact that there will probably be requests to extent the round of evaluation cycle, which would lead to a mismatch with the minimum contribution papers. COM

One MS supports the three proposals of the paper regarding how to deal with Moneyval and asked if Moneyval countries already knew which countries would be the first ones to be evaluated. The MS asked what the consequences would be if the Moneyval started earlier in terms of providing assessors. COM answered that there was no precise calendar yet.

- **ICRG**

The ICRG, and then Plenary, will discuss a number of possible listings and de-listings.

- **Possible FATF listings** (South Africa, Nigeria) **and de-listings** (Morocco, Cambodia: for both of them, all action plan items were largely addressed in October 2022, followed by an on-site meeting in January).

The following progress reports will be discussed by ICRG: Myanmar, Philippines, Albania, Türkiye, Gibraltar, United Arab Emirates, Uganda, Senegal, Mali, Jordan, Burkina Faso, South Sudan, Barbados, Cayman Islands, Panama, Jamaica, Haiti.

One MS raised concerns about the fact that the situation on the ground of Myanmar with the military coup and the civil war make it difficult for the country to make progress. In addition, it is

key to preserve the possibility for NGOs to be active on the ground and get access to financing as enhanced due diligence is applied on a risk-based approach.

One MS asked if Albania has made some progress on the draft Voluntary Tax Compliance (VTC) law which is not in line with FATF/Moneyval standards. COM replied that the draft was sent after the face-to-face meeting, without addressing however the concerns that were raised.

- The next POPR/potential listing include:
 - Cameroon, Croatia, Vietnam (June 2023)
 - Bulgaria (October 2023),
 - Kenya, Namibia (February 2024)
 - Venezuela, Monaco (June 2024)
- To be agreed at ICRG: Benin and Zambia could be kept in the pool (COM supports keeping them in pool).

One MS expressed support that Benin and Zambian are kept in the pool.

- **Russian Federation**

There are two issues concerning the Russian Federation: the nomination by Ukraine of Russia to the ICRG and the membership issue (to be covered at Plenary).

Concerning the nomination, COM's view at the moment is that the submission by Ukraine may not be sufficiently strong technically to support a nomination at this upcoming Plenary; at the same time, we see that the submission is richer than the previous ones and provides additional evidence. COM would thus consider necessary to have the appropriate time to give it due consideration and assess all its elements. Against this background, we would consider appropriate that the item is – like in past Plenaries – kept open and reconsidered at the next Plenary, also considering that the situation on the ground is constantly evolving.

With regard to the membership issue, COM would be in favour of supporting moving to a suspension of Russia's membership rights, provided that there will be consensus to achieve such an outcome. COM will have further discussions on this issue in the coming days, before the start of the Plenary.

4. Preparation of the FATF Working Groups and Plenary meetings

- PDG
 - **Beneficial ownership**
 - **Draft guidance on beneficial ownership (R24)**

The changes mostly focus on clarification in relation to BO information, register approach, access to information.

There are also more substantial changes on the section on the misuse of the nominee arrangements.

Most of the changes are of editorial nature.

- **Potential Revision of R25**

The work started in February 2021, followed by a white paper consultation, the agreement in plenary for the text for the public consultation in 2022, the agreement on the draft amendment in January 2023. Now, the text is going to be submitted for approval at the next plenary.

Editorial and substantial changes:

- The “objects of power” should be included as BO of trusts and similar legal arrangements.
- The purpose of the trusts or similar legal arrangements are considered as basic information concerning the trusts and similar legal arrangements.
- Clarification of the extent to which the verification measures or mechanisms could vary according to the level of risk.
- Clarification of the “adequate”, “accurate” and “up-to-date” information on trusts and other similar legal arrangements.

Next step: Create a drafting group after the plenary to develop a draft guidance that should be adopted on the FATF plenary of February 2024, after the public consultation of October or December 2023.

- **FATF Best Practices Paper on Combatting the Abuse of NPOs and potential revision of R8 – update**

At the FATF plenary, COM will present the progress report on the key issue only on the BPP.

The key issues on which the project team is considering expanding guidance are the following:

- Measures for NPOs at no risk/low risk
- Encouraging NPOs to conduct transaction via regulated financial channels
- Targeted risk-based supervision of monitoring of NPOs (including measures for NPOs on beneficiaries and associate NPOs; NPOs not required to conduct customer due diligence).
- Good governance practices for NPOs
- Access of legitimate NPOs to financial services (including right to bank accounts)

The project team group supports a clarification of the obligations in terms of measures that the countries have to put in place but also by the NPOs not to be abused for the purpose of TF.

The next steps are the following ones:

- Discussion of the BPP at the FATF plenary of February.
- June Plenary where all the package of the BPP, R.8 and the interpretative note will be discussed.
- Public consultations from June to October.
- Adoption of the whole package at the October Plenary.

One MS asked if COM had identified some red lines. COM answered that some questions were raised for example about how to introduce the relation between R24 and R25, but that it was not a red line. Some PT members would like to introduce a reference to the targeted financial sanctions that the NPOs should apply. COM is not certain of its position on this question for now.

One MS raised concerns about the UN Security Council resolution 2664 and its impact on NPOs. COM answered that a closest focus to this issue will be made when the issue will be raised to COM.

- **Virtual Assets Contact Group (VACG): Report by the Co-Chairs & roadmap on improved implementation of Rec15**

The VACG is presenting to the approval of the PDG the Report of the VACG's Co-Chairs on the activity of the VACG since October 2022.

The VACG also presents the VACG's plans for the focus of the 2023 Targeted Update report on R.15 Implementation as well as plans for outreach and other measures to strengthen R.15 compliance. Agreement of the PDG is needed on the Targeted Update in order for FATF to consider the report at the June 2023 Plenary.

- Report from the Virtual Assets Contact Group Co-Chairs:

The report focus on the activity of the Virtual Assets Contact Group (VACG) since its last report in October 2022. Over this period, the VACG discussed: (1) VA market developments; (2) other key issues, including the involvement of traditional financial institutions in virtual assets; (3) the use of VAs for ransomware attacks; (4) geographic risk indicators; (5) the Travel Rule; and (6) R.15 compliance.

Among the key elements of the report, as of November 2022, 75% of assessed countries are partially or non-compliant and none is fully compliant with Rec.15. VACG members agree that there remain regulatory challenges in applying the FATF Standards to DeFi arrangements, including regulatory perimeter issues. Applying AML/CFT measures to NFTs remains challenging, partially due to the wide variety of types of NFTs and the lack of definition of the term.

The VACG discussions over the period also focused on the VACG work plan and options to strengthen R.15 compliance, which main outcome is the proposal made to PDG of the document on VACG work planning: Roadmap to improve R.15 compliance.

PDG should note the latest activity and work planning of the VACG presented in the report, including the upcoming VACG meeting in Tokyo in April 2023.

- Targeted update report on Implementation of Rec.15:

VACG will produce a Targeted Update report for PDG in June 2023 on jurisdictions' progress implementing R.15 (including the Travel Rule). It is proposed that the June 2023 Targeted Update report of the VACG includes internal (non-public) information in an annex illustrating the steps countries have taken towards implementing R.15 including the Travel Rule, made notably on the basis of a survey to conducted in Fe-June 2023. This report would also cover regulatory policies and responses to emerging virtual asset risks and developments, including DeFi, NFTs, unhosted wallets including P2P, stablecoins, ransomware and sanctions evasion.

The VACG also proposes that the FATF publish a more limited table, with information on only certain jurisdictions, namely FATF members (due to the size of their economies and the importance of their leadership in implementing the FATF Standards) and other jurisdictions with materially important VASP activities.

Question for PDG:

Does PDG agree to the proposed focus of the 2023 Targeted Update?

LTT:

- *COM is supportive of the focus of the Targeted Update on jurisdictions' progress implementing R.15 (including the Travel Rule), based on a survey that will give key information (whether or not a risk assessment has been conducted, legislation has been adopted or is being prepared, licensing regime and supervision are or not in place) and basic evidence (links to the relevant legislation or reports) to obtain a comprehensive view of the state of play in all jurisdictions.*
- *COM also support the intention of publishing the main findings of this report to highlight the situation in the most relevant countries. In that regard, the criteria for determining which jurisdictions should be deemed relevant could be further detailed to also encompass smaller jurisdictions with important VA activity.*
- *COM is also happy to share and make available its own European Union legislation to Global Network members on the virtual assets community workspace and invite other jurisdictions to do so.*
- *Last, COM believe it is important, like for former targeted update reports, to also cover the last developments regarding regulatory policies and responses to emerging virtual asset risks and developments, including DeFi, NFTs, unhosted wallets including P2P, stablecoins, ransomware and sanctions evasion.*

Questions for PDG:

Does PDG echo the sense of urgency and agree that VACG needs to take additional steps to incentivise compliance with R.15?

LTT

- *COM can only agree with the view that the delay in the implementation of the Recommendation 15 requirements, including the travel rule by a significant number of jurisdictions is worrying and must be tackled. It is not only questioning the credibility of the FATF, but also expose the international community as a whole, in a context where the threat represented by virtual assets is rising.*
- *COM is therefore very supportive of taking additional actions entailed in the roadmap proposed by the FATF secretariat that should allow to help, and where necessary, to put pressure on jurisdictions that are still not taking the steps to comply with recommendation 15.*

Does PDG agree that to incentivise compliance with R.15, the VACG produce a table for publication that includes information on whether relevant jurisdictions have taken certain, verifiable steps towards R.15 compliance?

LTT:

- *COM supports the principle of having a published table highlighting the state of play of the compliance of most relevant jurisdictions with recommendation 15.*
- *In that regard, the work on the criteria to determine which jurisdictions have materially important VASP activities will be of a fundamental importance to obtain a meaningful result.*

Should this table be published (a) at the end of 2023; (b) in the first quarter of 2024; or (c) in June 2024?

LTT:

- *As indicated in its written comments, COM has a preference for June 2024, to allow for more jurisdictions in the process of implementing the standards to complete their work, incentivise the ones that are late to start their own and give the VACG the possibility to rely on information from the 2024 Targeted Update survey, with no need for an update, which would limit work for relevant jurisdictions.*
- *in a spirit of compromise, COM can however show flexibility for the first quarter of 2024 solution that was put forward during last VACG meeting in January.*

Does PDG agree that the table for publication include information on all FATF members and jurisdictions with materially important VASP activities?

LTT:

- *Given the dematerialised nature of the risk linked to the misuse of crypto-assets, that can also be found in very small jurisdictions or economically less advanced ones, COM would like to reiterate its proposal not to focus only on big jurisdictions, but also all those that have a significant VA activity.*
- *Consideration could for instance be given to the weight of the new technologies sector in the country's GDP, the tax treatment of virtual assets, including the need to declare the possession of virtual assets and whether they are subject to capital gains taxes.*

- **Concept Note: Technical updates to Recommendation 16**

At the October 2022 Plenary, delegations agreed in principle to start a PDG project to carry out technical updates to R.16 in view of new messaging standards. The note presented for approval by the Plenary sets out the proposed scope and organisation of that project.

R.16 currently refers to wire transfers. It requires financial institutions to, among other things, include required and accurate originator information and required beneficiary information on wire transfers and related messages.

The payment architecture including payment methods, means, systems, technologies and players, have evolved since the time R.16 was put in place in 2012¹. With the development of the means of electronic cross-border movement of funds, innovations in financial technology have created new ways to send money, giving room for the emergence of new third-party payment processors (TPPPs) outside the banking sector to facilitate these transactions, and as a result changing the structure of the payments system, and reducing the relevance of the current R.16.

On the technical side, payment messaging standards have also evolved. Banks and financial institutions are currently preparing to transition to the new, structured and data-rich ISO 20022 financial messaging standard, which contains more granular information (e.g. beneficial ownership information, structured data fields on customers' address etc.) that can be possibly used for CDD purposes.

The objectives of this project are to carry out a targeted review and update R.16:

- a) to reflect changes to the payments standards, and architecture, in particular ISO20022, for more consistent interpretation and implementation;
- b) to reflect changes in payment market structure, ensuring R.16 remains technology-neutral, and to align the objective of the R.16 with payment transparency. This will seek to providing a level playing field in domestic/cross-border movement of funds, regardless of methods, processes, systems and platforms used and clarify the role of different players in the payment systems, if needed; and
- c) to examine areas in which R.16 may need adjustment in order to remain technology-neutral or to permit use of evolving payment technologies, methods, and tools with potential to achieve the objectives of R.16 more efficiently and effectively.

The project would primarily focus on updating R.16 to reflect the terminology of ISO 20022. In addition, the project will also explore in a targeted manner, if any part of R.16/INR.16 needs to be

¹ Wire transfers was previously included as Special Recommendation VII and last revised in 2008.

updated to reflect changes in the market landscape (e.g. new payment methods, payment processes, systems and platforms and emergence of new technologies).

A project team will be established. The delegations taking part as project team members will collectively also have to provide the following resources:

- a) Two FATF project leads.
- b) 10-12 project team members with knowledge and expertise of AML/CFT controls in the context of payment systems. Project team members will be expected to conduct literature reviews; to identify and analyse existing information and research; to provide comments on the draft amendments; and to identify private sector expertise for engagement purposes.
- c) Project team members will be expected to attend and actively participate in 2-3 virtual project team meetings and 1-2 engagement sessions with payment experts/the private sector. The project team contact list will be regularly updated to remove non-participating members.

- **Asset recovery: Revision of R.4 and R.38**

In February 2022, a new PDG project started aiming to develop amendments to R.4 and R.38 on asset recovery in the domestic (R.4) and international (R.38) context. This project is even more important for the European Commission as a new directive on asset recovery has been proposed and it is currently under negotiation with the Council.

All FATF delegations acknowledge the importance of the topic and the need to be ambitious, but sharp divisions remain across delegations, primarily with regard to suspension and confiscation powers. Legal challenges are mainly related to different procedural approaches and constitutional provisions.

The draft currently proposed by the FATF project team was presented and in particular the provisions related to the kind of confiscation that should be available for each country, i.e. Conviction-based confiscation and non-conviction based confiscation, as well the toolkit that countries should have in order to enhance their asset recovery powers, e.g. extended confiscation, third party confiscation. In addition, the project team proposed to introduce the use of tax powers in the AML/CFT framework. A discussion will be set up with DG TAXUD on that topic.

Timeline:

- PDG in June 2023 to revise those changes and agree to a public consultation.
- The PDG and the Plenary will consider and agree the final proposed changes in October 2023.

- **RTMG**

- **The Use of Art, Antiquities, and other Cultural Objects (AACO) as a Tool for ML and TF**

The report on “the Use of Art, Antiquities and other Cultural Objects (AACO) as a Tool for ML and TF” has been adopted via written procedure.

Two categories of challenges related to ML and TF in the art and antiquity market:

- Vulnerabilities related to the type of objects and the nature of the market (difficulties in tracing the origin of cultural objects, history of privacy and use of third party intermediates, inadequate measures or non-existent measures to identify customers, non-existent suspicious transactions reports shared with FIUs).
- Investigative challenges (lack of investigations, limited resources, awareness and expertise by operational authorities and difficulties with cross-border investigations).

Mitigation measures to address those challenges:

- Specialized units and investigative training programs focused on the market
- Data basis in cooperation with experts and archaeologists to investigate and repatriate cultural objects,

The report also includes some risks indicators.

Next steps: Communication plan, planned communication activities, in-person meeting in Brussels to present the outcomes of the project (1st half of May), presentation of the report at some UN events (UNESCO, UN counter terrorism committee executive directorate), presentation at the Egmont plenary and MENAFATF in March.

- **Update on other ongoing projects**

- **Misuse of Citizenship and Residency by Investment Schemes**

In October 2022, the FATF Plenary launched a joint FATF – OECD project to analyse the misuse of citizenship and residency by investments programs for AML/TF purposes and the implication of governments in corruption, tax and migration issues:

- The project is co-led by the UK and the US. It will result in a report on the global awareness and understanding of the risk arising from the abuse of this programs by criminal actors.
- In December, the project co-leaders developed questionnaires addressed to the EC, DG JUST, HOME and TAXUD.

- In January, the co-leads formed a project team with experts from different regions, FIUs supervising, law enforcement entities, ministries, European commission.
- First PT meeting on 09/02/2023.
- The PT will draft a first version of the report by the FATF plenary of February.

- **Concept notes for decision: Cyber-enabled fraud & Crowdfunding for Terrorism Financing**

- The MLTF and cyber-enabled fraud project will be launched during the next plenary. The concept note has been shared. New technologies, the use of AI and machine learning could provide the possibility to commit crimes online from any part of the world. This project is one of the priorities of the Presidency. The main objectives are:
 - To develop a greater understanding of international risk raising from this type of crime.
 - To analyse the typologies of the techniques associated to this crime.
 - To better understand the challenges of investigating and tackling financial flaws associated to this kind of crime.
 - To raise awareness.
 - To support ongoing FATF work on assets recovery. This project will complement the PDG project on assets recovery.

The project is led by a FATF member (FIU Singapore), an Egmont group member (Hong Kong) and Interpol.

- Project on crowdfunding for TF: One of the co-chairs of the project, Mr Antonio Lorente Salmeron, was invited to present the concept note on crowdfunding for terrorism financing, highlighting the project objectives, outcomes and timelines. The text of the concept note will be submitted for adoption at the next FATF Plenary.

- **IO.7 Analysis: Challenges with ML investigation and prosecution**

COM made a brief presentation of the IO7 analysis on challenges with ML investigations and prosecutions.

5. AOB

The Chair indicated that the Maltese Delegation would like to include a point under AOB, giving a brief overview of a questionnaire they intend to circulate amongst Member States' delegations to identify the nature of national AML/CFT supervisors and enforcement agencies/authorities/bodies.

The Chair thanked all delegations for attending the meeting and closed it.