Minutes

15th Meeting of the Expert group on Money Laundering and Terrorist Financing (E02914)

7 February 2018, Brussels

1. Adoption of Agenda and minutes of the EGMLTF meeting on 11 December 2017

The Chair welcomed the participants to the 15th EMLTF meeting and adopted the agenda. The minutes from the 14th Expert Group meeting were sent on 9 January 2018. The Commission received written comments from several members that were all taken on board. The revised draft minutes were sent again on 26 2018. Based on this, the minutes were adopted and will be publically available on the Commission's website.

2. Nature of the meeting

Meetings of the Expert group on Money Laundering and Terrorist Financing are non-public. The positions expressed by participants may not necessarily reflect an official position of the Member State, State or organisation it represents. These meetings should allow for coordination with Member States and an informal exchange of views.

3. List of points discussed

3.1. Issues relating to the 4AMLD [Point 2 of the Agenda]

- Information about the **finalisation of the agreed text of the amendments to the 4AMLD** proposed on 5 July 2016

  The Commission informed the EGMLTF members about the finalisation of the agreed text of the amendments to the 4 AMLD. COREPER has endorsed the political agreement, which had been reached on 20 December 2017. Since then, a finalisation meeting with the lawyer-linguists of the EP, the EP secretariat representatives and the Council secretariat representatives was held on 29 January 2018. On the Council side, the lawyer-linguists' and experts' meeting has been planned on 8 March 2018. After that, the Directive will need to receive final endorsement by COREPER/ECOFIN and will be ready for publication.

  The EGMLTF members were also informed that the Commission is planning to organize transposition workshops. In this regard, the EGMLTF members were invited to send their preliminary suggestions concerning the areas of interests, on which the transposition workshops should be focused. To this aim, an email will be circulated with the relevant mailbox address.

  Information point only – no conclusions or vote

- Information from the Commission regarding **open infringement non-communication cases**

  The Commission updated the EGMLTF about the pending infringement procedures for non-communication of measures transposing the 4 AML Directive.

  In July 2017, the Commission opened 16 infringements for non-communication. Following that, the Commission further opened 4 non-communication infringements against those Member States where transposition proved to be only partial. In addition, the Commission proceeded to the second stage of the infringement procedure: last December, reasoned opinions were sent to 8 Member States, which did not notify any measure. Since then, the Commission received one complete notification from one Member State. The

remaining 7 MS were asked to update the Commission on their legislative process. One Member State took the floor to ask which kind of mechanisms should be used for the notification. The Commission reminded the Member States that they are obliged to notify their legislative measures taken to transpose the Directive – which will then be assessed – and that it had received complete notifications from 14 MS. Furthermore, Member States must notify the options that they have taken under the 4AMLD.

Information point only – no conclusions or vote

- Information from the MS about the **current state of play**

  During a tour de table, the Member States which still had not notified the relevant laws had the opportunity to update the Commission and the EGMLTF members about the state of play concerning the implementation of the 4th AML Directive in their respective countries, most of them stating that the law is currently in the legislative process.

  Information point only and request to delegations to provide the Commission with an update – no conclusions or vote

- Information from the Commission regarding **notifications by the MS under the 4th AMLD and FTR**

  The EGMLTF members heard an update on the state of play of the notifications and options under the 4 AML Directive and the Fund Transfer Regulation.

  They were reminded that, following the 12th EGMLTF meeting in October 2017, the Commission had sent a letter to the relevant contact points, inviting the Member States to fill in a comprehensive table describing the Member States' notification obligations under the AMLD and the FTR. The Commission thanked those 15 Member States from which the notifications have been received and invited the remaining Member States to send their feedback. In this regard, an email will be circulated to remind the concerned Member States to send their notifications as soon as possible. Indeed, under the 4 AML Directive, the Commission has an obligation to compile the information concerning the notifications and share it with all the Member States.

  With regards to the notification under Article 17(3) of the FTR, the Commission reminded the EGMLTF members that an official letter had been sent in August 2017 through ambassador official channels. So far, the Commission has received the reply from 16 Member States, thus the remaining Member States were invited to duly comply with their notification obligation.

  The Chair urged the Member States which have not notified yet, to proceed promptly with the mentioned notifications and drew the attention of the EGMLTF members to the importance of advancing swiftly with the transposition of the 4 AMLD, also bearing in mind the upcoming entry into force of the 5 AMLD.

  Information point only – no conclusions or vote

3.2. Information from the Commission regarding other Commission initiatives [Point 3 of the Agenda]

- **Restrictions on cash payments –** possible legal initiative relating to restrictions on cash payments

  DG ECFIN presented to the EGMLTF members a possible legislative initiative concerning restrictions on cash payments

and shared the main outcomes of this assessment with the EGMLTF members. With regard to TF, the study pointed out that restrictions on high value cash payments would not have a significant impact as it appears that, very often, recent terrorist attacks did not require many resources, as most of the payments made for the preparation of these attacks were low value payments that would not have been caught by any prohibition to pay in cash. In this regard, it was also noted that many transactions related to terrorist activities are already considered as illegal and thus severely punished. Therefore, adding a layer of prohibition to pay for these transactions in cash, which would entail typically a small administrative fine, would probably not have much of an impact, considering that the underlying transaction (for instance, procuring weapons) is already more severely punished. The study also examined the issue of tax evasion, reaching the conclusion that the direct impact on evading mechanisms of possible restrictions to payments in cash would also be limited. However, the study found that the prohibition on payments in cash could be promising in relation to the fight against ML, because there are various mechanisms of ML that entail payments in cash and it appears that the prohibition on these could indeed hamper the ML process. Therefore, whereas the prohibition would have limited direct impact on the tax evasion itself, it could though prove useful with regard to the ML of the hidden incomes generated from the tax evasion. Finally, the study looked also at the internal market aspects: it was found out that the current existence of various prohibitions nationally or the absence thereof impact on the proper functioning of the internal market. Indeed, according to statistical evidence, the existence of some national prohibitions tends to displace the business in one country or another. This also has an impact on the efficiency of these prohibitions nationally because for ML purposes these prohibitions can by bypassed by choosing the proper route and the proper country where these prohibitions either do not exist or are set at a lower level.

The EGMLTF members were informed that, as a conclusion of these findings, following a political high-level meeting between various Cabinets, the decision was taken that this Commission will not propose any legislative initiative introducing a prohibition to large payments in cash. Such decision stems from a number of considerations: firstly, for timing reasons, as the end of the Commission’s mandate is approaching. Furthermore, the proposal derived from an urgency to tackle the fight against TF, but it appeared that such measures would not be so effective for this purpose, but rather more helpful in the fight against ML. Given that a lot of initiatives have already been devoted to the fight against ML, such as the transposition of the 4 AMLD and the adoption of 5 AMLD, the Commission does not see the need at this point in time to embark on another additional project on ML. Finally, concerning the next steps, DG ECFIN will report to ECOFIN on the Commission’s conclusions; the study will be made public together with an analysis by the Commission (which will not be an official IA, but a staff working document analysing the study and drawing the conclusion), outlining that any legislative initiative will be pursed at this stage, but leaving the door open for possible further action by the next commission.

On Member State Regarding this topic on the agenda AUT wants to refer and point out to the resolution of the "Nationalrat" (Austrian legislative organ/chamber of the Austrian parliament representing the general public) which was passed on 24 February 2016 and contains provisions on the use of cash. Therein, the Austrian government is obliged to support the ongoing unrestricted use of cash (Euro banknotes) on all European and international levels. There shall be no means to restrict this possibility. AUT provides the offer to put this legislative text at anyone's disposal after the session. A further point AUT wants to mention in this context is that the government agenda of the new Austrian federal

government also includes the establishment of the protection of cash payments within the Austrian constitution.

The Chair thanked the Member State for the availability of sharing the mentioned text, which will be also circulated to ECFIN.

Information point only – no conclusions or vote

- **Proposal for a Directive on countering money laundering by criminal law**

DG HOME updated the EGMLTF members about the proposal for a Directive on criminalization of Money Laundering (CMLD).

The EGMLTF members were informed that the negotiations on the CMLD are progressing well. Following the vote in the EP (LIBE Committee) on 11 December 2017 and the adoption of the Council's position on 8 June 2017, the first trilogue took place on 17 January, where the co-legislators committed themselves to progress with this file expeditiously. Overall, the content of the Commission's proposal has been maintained by both the EP and the Council. Nonetheless, the EP has brought forward many proposals, such as: more severe penalties; inclusion of negligent ML; restricting double criminality in cross-border cases; additional sanctions for natural and legal persons, as well as extended jurisdiction and rules on conflicts thereof. The EP also aims at including rules on confiscation as part of this proposal. DG HOME expressed the hope that the upcoming trilogue, which will be held on 21 February 2018, will be constructive, as well as the willingness to reach an agreement before the summer.

DG HOME also drew the attention of the EGMLTF members on the call for proposals to support projects on countering terrorism financing under the ISF-Police. The EGMLTF members were reminded that the call for proposal opened on the 29 November 2017 and the deadline is on the 6 March 2018. The call for proposals focuses on two main priorities: (i) establishing a network of counter-terrorism financial investigators in the counter-terrorism units of law enforcement; (ii) supporting the development of public-private-partnerships (PPPs) between law enforcement, FIUs and the private sector (e.g., payment service providers, banks, money remittance services) for the purposes of combatting terrorism financing.

DG HOME further explained the importance of developing PPPs, especially for TF. Indeed, unlike for ML, when it comes to TF, the amounts are often quite small and it is rather difficult for banks to detect suspicious transactions related to terrorist activities. The aim is therefore to bridge the gap between the criminal intelligence of law enforcement and the financial intelligence, which is held in banks. The EGMLTF members were reminded that, in this regard, there have been a number of developments in some countries, notably in the UK (the Joint Money Laundering Intelligence Taskforce, JMLIT), the NL and other Anglo-Saxon countries around the world. Likewise, the FATF has been promoting discussions about this type of PPPs. They are therefore seen as a useful complement to the existing AML framework.

The EGMLTF members were furthermore informed that the range of activities that can be funded under the call for proposal is quite broad, covering for instance communication activities, networking, the development of protocols, the development of infrastructure concepts, studies, … The eligible applicants are public institutions from all MS, except DK and UK which do not participate in the in the ISF-Police, as well as private entities.

One Member State asked clarifications concerning the type of setting that the PPPs on TF would take, specifically in relation to the degree of formalisation of such PPPs, whether they would consist in meetings on TF typologies and awareness actions towards the private sector or whether they would entail some more formalised setting within the framework of the Directive.

DG HOME clarified that the text of the call for proposal has been intentionally kept quite open, in order to allow any type of proposal to be presented. The aim is indeed to promote the development of any kind of partnership, which can span from a more strategic partnership between public and private actors to exchange of typologies or even an operational exchange of information under national law (provided that there is a legal provision in place to allow such exchange, as it is the case for the UK and the NL). All in all, the decision on the kind of activity to establish is left to the applicants, as well as its level of formalisation: it may be the establishment of the partnership as such, but it may also consist of communication activities, networking, studies, or soft measures to look into the possibility of setting up these partnerships.

The EGMLTF members were informed that EUROPOL, even though it cannot be a co-applicant for the IFS call, had set up a forum, which had a first kick off meeting in December 2017, comprising of six Member States, two non-Member States and fifteen banks, to start exchanging strategic information. EUROPOL further expressed its full support for the ISF-Police call for proposals and offered its availability to provide advice, information or feedback to any interested MS on how to set up a PPP.

One Member State sought further clarifications on the necessity for the PPP to be formalised under the national legislative framework.

DG HOME specified that the aim of the call of proposals is not to change any legislative framework at national level. If a MS has a legislative framework that allows for this operational exchange of information, it can be set up as such. Otherwise, if the legislative framework allowing for such exchange is not in place, two options are envisaged: either the PPP is limited to a more strategic level or the legislative framework could be changed. In this regard, as part of the call for proposals, it can as well be explored how the legislative framework should be adapted to allow for a more operational exchange of information. It was reiterated that the decision on how to approach this call for proposal has been left to the applicants.

Information point only – no conclusions or vote

- **Proposal for a Regulation on mutual recognition of freezing and confiscation orders**

DG JUST.B2 presented to the EGMLTF members the proposal for a Regulation on mutual recognition of freezing and confiscation orders, which was put forward by the Commission in December 2016.

The EGMLTF were reminded that confiscation of criminal assets is a very efficient tool to combat crime and it has also proved useful in disrupting sources of revues of terrorist organization and combatting terrorist financing. The proposal was adopted in the context of the Action Plan against terrorist financing of 2016, also as a result of a call from the EP and the Council to improve the judicial cooperation in criminal matters regarding mutual recognition for freezing and confiscation orders. At the time of the adoption of Directive 2014/42 on the harmonization of freezing and confiscation of instrumentalities and proceeds of crime, the EP and the Council called the Commission to also update the

legislative framework on mutual recognition, which was composed of two framework decisions (one of 2003 on freezing, and the other of 2006 on mutual recognition of confiscation orders). The Impact Assessment prepared by the COM has shown that these two framework decisions were in practice not applied sufficiently and that such legislative framework was not up to date with the latest developments in national legislations. The COM decided to propose a Regulation – and it was the first time that such a legislative instrument was proposed in the field of judicial cooperation in criminal matters –, considering that a direct legal instrument would be more practical for judges in the MS and that there was no need of transposition to adapt the mutual recognition procedures to specificities of national legislations. The aim of the Regulation is indeed to enhance the mutual recognition of confiscation or freezing orders, without though modifying the law regulating the substance of such orders.

The EGMLTF members were furthermore informed about the main elements of the COM's proposal: (i) extending the scope of the legislative framework to all types of confiscation in criminal proceedings, *i.e.*, classical confiscation but also extended and 3rd parties confiscation, as well as some types of non-conviction based confiscation when issued in the framework of criminal proceedings; (ii) introducing specific deadlines for recognizing and executing confiscation orders in another MS; (iii) enhancing the rights of the victims, in order to ensure that, when it is possible under national law to have a decision on restitution and compensation of victims, this should not be hampered in cross border recovery.

DG JUST.B2 further provided an update on the state of play of the negotiations. The Council reached its general approach in December 2017, whose main features are the following: (i) the agreement on the type of legislative instrument, *i.e.*, a Regulation; (ii) the further extension of the scope of such instruments, by covering not only orders issued in the framework or criminal proceedings, but also some types of confiscations which are non-conviction based confiscations, always relating to criminal matters. Taking as an example the Italian system of preventive confiscation, the Council agreed on this extension of the scope, provided that there are sufficient safeguards and there is still a link with a criminal offence.

The EP (LIBE committee) has adopted its position in January 2018. The EP's position strongly supports the instrument of the Regulation. Furthermore, the EP expressed a strong view in favour of reinforcing the protection of Fundamental Rights in this instrument, especially by adding ground for non-recognition linked to fundamental rights. This would entail that one judge in the executing MS will be in the position to refuse the execution of the order, where he has substantial doubts about the respect of fundamental rights in the issuing MS. This clause – which was already included in the Directive on the European Investigation Order – is not supported by the COM, as it would be too wide and it would allow executing judges to refuse orders on bases which are not sufficiently precise. The EP's position also focuses on proportionality in the issuing of freezing and confiscation orders as well as on safeguards.

Finally, the EGMLTF members were informed that the first trilogue had taken place on 23 January 2018 (as starting point to explain the position of the institutions) and the second trilogue will take place on 7 March 2018. The aim of the Bulgarian Presidency and the rapporteur in the EP would be to possibly find an agreement before June 2018, bearing in mind that it is a long and technical text but there are not many political issues that should be discussed.

One Member State sought clarification about the scope of application of the Regulation concerning non-conviction based confiscations and, in particular, it was asked whether the Regulation might apply also to administrative confiscations.

DG JUST.B2 explained that the scope of application is in principle limited to criminal proceedings, thus civil and administrative proceedings are excluded from it.

Information point only – no conclusions or vote

- **Revision of the cash control regulation**

TAXUD provided the EGMLTF members with an update on the revision of the cash control regulation.

The EGMLTF members were reminded that the current Regulation in place was adopted in 2005. Following two evaluations conducted on the implementation of the Regulation, four main areas to be addressed had been identified: (i) covering postal and freight consignments; (ii) concerning information exchange, the previous Regulation only entailed an obligation to make the information available, whereas the current proposal aims at a more active transmission of information; (iii) sub-threshold amounts. Under the previous framework, there was no possibility to act in relation to amount lower than 10.000 Euros. The current proposal, under the requests of many MS, provides with a possibility for the customs to detain the cash – even under the threshold – if there is a suspicion of criminal activities; (iv) the definition of cash, to be extended to also include *inter alia* liquid commodities such as gold bars and pre-paid cards as a place-holder. It was noted that so far those examples are not listed in the annex and the TAXUD called on the EGMLTF members to voice their comments and suggestions, if any.

Concerning the state of play with the co-legislators, the EGMLTF members were informed that, once the Commission's proposal had been adopted in December 2016, the Council issued its general approach on 28 June 2017 and the EP (LIBE and ECON Committees) issued its final report on 4 December 2017. The trilogues are scheduled to start in March 2018. With regard to the position of the co-legislators, the EGMLTF were updated on the main elements of the Council's proposals: (i) the aforementioned essential principles of the COM's proposal have been maintained; (ii) the Council proposed longer periods for data transmission (6 months where the COM's proposal is 30 days) and data retention (5 years with the possibility to extend for other 5 years if certain conditions are met, whereas the COM's proposal is 5 years); (iii) the use of the Custom Information System (CIS), whereas the COM proposed the possibility to do a study to understand which is the better IT tool for the active transmission of the information.

The EGMLTF were also informed that the EP supports the overall objective of the proposal and maintained the main elements of the COM's proposal. The features of the EP's position are: (i) adopting a delegated act for the risk analysis, instead of an implementing act, as envisaged under the COM's proposal; (ii) a shorter delay for transition of data (4 days); (iii) performing a study undertaken by the COM to evaluate the possibility to establish a Union FIU; (iv) with regard to national penalties, establishing a coordinate set of penalties in the MS; (v) agreement on using the CIS for information exchange and (vi) requesting a report every 3 years (whereas under the COM's proposal it would be 5 years) with a special request on whether the disclosure system is performing well.

Finally, the EGMLTF were informed that the trilogues are scheduled from March to May and the aim is to reach a compromise by May/June 2018.

Information point only – no conclusions or vote

- **Proposal for a Directive on combating fraud and counterfeiting on non-cash means of payments**

The EGMLTF members then heard a presentation on the state of play concerning the proposal for a Directive on combating fraud and counterfeiting on non-cash payments.

It was reminded that the current existing EU legal instrument in the field is an old council framework decision of 2001 on combating fraud and counterfeiting on non-cash means of payments. This instrument covers payment cards and checks but, as technology since then has brought huge changes in the area of payments (e.g., virtual currencies, mobile payments,…), the clear need to replace this old legislation was outlined. As required under the European Agenda of Security of 2015, the COM conducted an analysis to evaluate whether this old framework is fit for purpose and concluded that a new legislation in the field is needed. As a part of the cyber-security package, the COM submitted its proposal in September 2017. The COM's proposal encompasses several important novelties:

- it provides with a robust definition of payment instrument, which aims at being technologically neutral and future-proved, covering also non-corporeal payment instruments (*e.g.*, virtual currencies and mobile payments);
- it broadens significantly the field of conducts that should be criminalised according to national law and extends the scope of application to newly preparatory acts (including, for instance, the, so called carding);
- it sets clear minimum levels of maximum sanctions (*i.e.*, for certain conducts MS must provide for a maximum penalty of at least 3 years; for preparatory conduct: at least 2 years of maximum penalties; for conduct with aggravating circumstances at least 5 years of maximum penalties);
- it includes provisions on how to remove obstacles in cross border police investigations and ensuring that relevant authorities have jurisdiction to investigate and prosecute.
- it also strengthens existing networks of contact points for operational cooperation and enhances reporting of crimes for victims as well as supports significantly the information and help for victims.

Finally, the EGMLTF members were informed that the objective of the BG Presidency is to reach the Council's general approach in March 2018 and that the EP has planned to adopt its position by the end of June 2018.

Information point only – no conclusions or vote

3.3 Future Work on specific projects [Point 4 of the Agenda]

- Possible future work in the EGMLTF on specific **projects** that are of interest for MS

The Chair recalled the intention to use this forum of experts (EGMLTF) to develop concrete projects, as they stem from the SNRA, in order to further develop the AML policy and thanked the MS who have taken an active role to coordinate and take the lead on the projects developed so far.

Project on the definition of "occasional transactions"

The Commission recalled that the first project that generated interest among the EGMLTF members is focused on the definition of "occasional transactions". The Commission welcomed that FR has accepted to take the lead in this project and called on other MS to join it. This project aims at creating a common understanding as to what an occasional

transaction is and when operations could be considered as being linked as well as drawing up some criteria to aid the identification of these situations.

FR then presented the state of play of the project, currently at a preliminary stage. DK expressed the interest to contribute. The topic is challenging especially as requirements from FATF and EU are different, without though providing a definition for the occasional client. A draft document circulated by FR provides for elements for such a definition. Besides, all sectors are concerned, but differently exposed. The draft document proposes indicative criteria for defining an occasional client, raising attention to differences among obliged entities when it comes to applying such criteria. The aim of the working group is to define common criteria to define occasional transactions.

The Chair expressed support for the project on the definition of occasional transaction, as the elements presented by FR represent a good starting point. The Chair also thanked DK for having expressed the interest in participating to such project and called on the other MS to take part in it.

Information point only – no conclusions or vote

Creation of a sub-group that will participate in the work of the Commission expert group on electronic identification and remote Know-Your-Customer processes

The Chair explained that this is a project in which a sub group within the EGMLTF (group of experts) has to be created. EGMLTF members are welcome to express their interest in participating in this strand of work. Background note/working documents, including the decision to set up this group will be shared with EGMLTF members. The group should be composed of 7 members, and there are already colleagues who expressed their interest.

The Commission presented more details, in particular as regards the background, the tasks of the group, the terms of reference, the timeline of this work, and the selection criteria. A key element that started this work was a study carried out on electronic identification and digital on boarding (the process of taking on board new customers in banks) that was a mapping and an analysis of existing on boarding bank practices across the EU. The work started in December 2017 and should be resumed by end-2019. The key role of the subgroup is to provide expertise, but also to be the link between EGMLTF and other relevant expert groups. The Commission will provide support to facilitate the work flow and information flow between the groups. The Commission welcomed the interest expressed by DE and EE and invited others to join, on a geographical balance basis. Observers are also considered, in particular EDPS (European Data Protection Supervisor) and EUROPOL, with whom DG JUST has contacted in this respect.

Several MS welcomed this initiative and expressed interest in taking part to it, requesting clarification on some issues: appointing or not a distinct member in this subgroup and in EIDAS, eligibility of applicants from the private sector, receiving an overview of all groups so that overlap is avoided, who is the representing designated expert. One Member State reminded that within FATF there is also interest in working on KYC, Fintech, Regtech, so synergies are needed.

The Commission clarified all points and ensured that synergy with potential work in FATF will be considered.

Information point only – no conclusions or vote

Discussion on the elaboration of guidance on how the AML/CFT rules are applied by lawyers

The COM shared that it considers elaborating some guidance on how the AML/CFT rules are applied by lawyers – the process is at an early stage, thinking is on-going on specific arrangements. The SNRA already flagged this issue and the idea would be to work with MS and focus on the application of the legal privilege. It was recalled that the COM will have to follow up in June 2019 on the implementation of the recommendations including the application of AML/CTF rules by lawyers. It is thus important that COM receives feedback from MS on how this recommendation was implemented. EGMLTF members were invited to give feedback on this sensitive topic, on which there is a need to advance swiftly.

Information point only – no conclusions or vote

*3.4 AMLC and related issues [***Point 5 of the Agenda***]*

- Update on the **work of the AMLC**, the **ESAs Joint Opinion on the use of innovative solutions in the Customer Due Diligence process**

Dr. Jens Fürhoff (Chair of AML Committee) updated the EGMLTF members on the work of the AMLC, namely that AMLC delivered on all mandates under the 4 AMLD and FTR. This comprises three guidelines on: (i) risk based supervision, (ii) risk factors, (iii) fund transfers, as well as one opinion on AMLTF risk affecting the internal market and and two draft regulatory technical standards. Concerning the RTSs, AMLC delivered the draft and approval by COM is awaited for entering into force.

Dr. Fürhoff pointed out that these guidelines and the opinion create a common understanding of the risk-based approach to AML/CTF and how it should be applied. They also pave the way for a more consistent and robust approach on AML/CTF oversight and identify new risks as well as ways to reduce them, for example through work on the use of innovative CDD solutions and on supervisory cooperation in AML/CFT matters. It was stressed that this represents a improvement towards a consistent approach to AML/CTF in the financial sector. The EGMLTF members were also informed that the AMLC will discuss its 2018 work programme in an upcoming meeting, discussing updates to the risk factors guidelines and new areas where guidance is needed.

The Chair of AML Committee gave more details on the Opinion on the use on of innovative solutions by credit and financial institutions in the Customer Due Diligence process. On 23 January 2018, an opinion by ESA on innovative solution was published, as part of a wider work to create a common understanding of the use of financial innovations. CDD measures are a central element of the AML/CFT framework. Financial innovation can improve the effectiveness and efficiency of the CDD measures, but there is also a risk of weakening them. ESAs explore how innovative solutions can help to implement AML/CTF obligations more effectively. This opinion aims to further develop a more common understanding between national competent authorities to avoid regulatory arbitrage and ensure proper functioning of the internal market. Competent authorities should consider the oversight and control mechanisms, the reliability of CDD measures, delivery channel risks, and geographical risks. The ESAs encourage competent authorities to address the AML knowledge gap between AML supervisors and Fintech supervisors in order to reduce inconsistencies. The AMLC has had this topic on the agenda for over one year and the focus is kept on Fintech/Regtech.

Dr. Fürhoff concluded by recalling that the AMLC has also engaged in some work on occasional transactions and expressed willingness to provide input in this regard.

Information point only – no conclusions or vote

- **RTS** under Art. 45(11) 4AMLD: establishing **central contact points** by e-money issuers and service providers – state of play

  COM made an information point on the final approval of the draft RTS (Regulatory technical standards), to be approved by the Legal Service, apparently with no modifications from the text proposed by the ESA Joint Committee. Further to approval and publication, the EP and Council will have two weeks to object.

  Information point only – no conclusions or vote

*3.5 High Risk Third Countries [***Point 6 of the Agenda***]*

- The Commission **methodology on high risk third countries** – state of play

  The Chair recalled to the EGMLTF members that the methodology is aimed at defining how the Commission will conduct its own assessment of high risk third countries (HRTC), which is an obligation under Article 9 of the 4th AML Directive. COM has heard the call of the EP for a more ambitious approach in the listing and thus submitted a roadmap at the request of the EP in 2017. COM committed to develop a methodology for a more autonomous EU listing process by the end of December 2018. The Chair stressed that the aim is to have a transparent procedure and a methodology available for the public at large.

  At the last EGMLTF meeting the discussion paper for the methodology was discussed. The draft methodology was shared in the meantime with MS and other services in the COM, and comments received were integrated. What was shared for this EGMLTF meeting is therefore a revised version which contains the feedback from MS and COM services.

  The main elements of the methodology were highlighted:

  1) FATF+ approach, *i.e.* adoption (replication) of FATF list, as a very robust and solid system taken as a bottom line. An EU assessment will complement this bottom line.

  2) Geographical scope: some MS asked whether countries with Monetary Agreement will be covered by this exercise and COM Legal Service confirmed.

  3) Stages of the methodology:

  a. Scoping exercise to select countries subject to the exercise with the objective criteria, consultation of EEAS and EUROPOL for their input on level of threats.

  b. Set priorities to define priority 1 countries (to be assessed by end-2018) and priority 2 countries (to be assessed at a later stage when updated information sources are available (4th round MER).

  The assessment will start with a country profile, to have a better understanding of the political, economic and social context (including the threat situation). Then all countries will be assessed according to the criteria which are the 8 building blocks that stem for the 4th AMLD plus a requirement on targeted sanctions. It is also proposed to assess separately CDDs measures applied by the financial sector versus non-financial sector.

  Regarding the threshold for being listed, a more sophisticated approach based on the rating of the deficiency level is developed. The idea is to have more granularity/detailed analysis, with 4 levels of rating for each building block, and then to make a marking system. Countries showing/presenting great/major deficiencies will be listed. For countries with significant deficiencies, the country's risk profile will be considered to determine whether deficiencies are strategic and, if so, the country will be listed.

Exceptional situations are dealt with by an urgent procedure ('emergency break'). The approach is that a country is listed based on a body of evidence in case of exceptional situations which request urgent actions. Then a complete assessment will follow.

The same applies for situations where the countries have not been reviewed by the FATF or an FSRB, or where they are not covered by a MER or where outdate information exist based on the old MER, in which case a specific procedure is also provided.

With regard to timing, the intention is to have adoption of this EU list and the amendings in batches, basically 3 times a year, more or less following the frequency of the FATF listing in order to incorporate both the FTAF listing and the assessment being done autonomously by the COM.

The same applies for the delisting: countries removed by the FATF will be automatically delisted, when those countries are not in the EU scope, whereas when they are in the EU scope, then an assessment will be made by COM on whether they meet the exit criteria from the EU, and if they do not present strategic deficiencies.

The floor was open to comments/questions followed by COM replies/clarifications.

One MS mentioned the following:

1) On page 8, the sentence which starts by 'however' may leave the impression that the FATF such as criteria may not be followed by the EU list.

2) Exceptional circumstances should be detailed with the view to avoid a political bias.

3) Criterion H: does it entail the effectiveness of all criteria or the effectiveness of the AML/CTF criteria? Suggestion to mention criteria against the background of which Europol's assessment is done.

4) Delisting: countries listed according to FATF criteria may find themselves in the situation of being delisted based on EU criteria. Suggestion to delist a country once delisted by FATF.

COM explained that:

1) The assumption is that countries listed by FATF pose a problem for the Union financial system. However, the Union is a distinct legal order, hence we cannot commit to automatically replicate FATF without our own assessment. The word 'however' should be understood as an assesment by COM of the factual elements leading to listing by FATF.

2) The idea is to have a solution for an exceptional situation – this is necessary in cases of countries that were delisted only to be relisted thereafter. COM invited EGMLTF members to share their view on what could be considered 'exceptional', received no feedback so far and is welcoming objective elements.

3) On criterion H on effectiveness, effectiveness of the system is evaluated within every building block. A distinction is made between the countries which are significant for the international financial system and the EU financial system – if a country is dangerous for the international financial system (and thus automatically dangerous for EU), but falls outside the scope of the exercise there is no point in making an EU assessment. On the contrary if the country falls within the scope, then EU own criteria should be applied.

4) The delisting criteria are public and any country listed by EU will know what measures need to be adopted for their delisting; a constructive dialogue with EU is considered with the view to see the measures that need to put in place.

EUROPOL clarified the criteria for their first pre-assessment. Every second year it publishes SOCTA, a public report based on the contributions of the MS regarding their ongoing investigations. This is a complex process based on predicate offences, in more than 50 countries, and encompassing questionnaires from MS to have the most complete possible picture of crime across the EU. If need be, the in-depth methodology of this assessment can be further detailed.

Another MS raised attention to consequences of this methodology and the importance to be precise and clear. Furthermore, on process, it is important that third countries are consulted and informed about what COM finds, and welcomed that there will be Technical Assistance. It should be specified that third countries are able to provide the COM with additional info and that third countries will be clearly informed with the COM analysis. MS should be informed and provide feedback on the COM's analysis, but a period of one month is enough to send/provide comments, more time is needed to form an opinion. As regards the emergency break procedure, it needs to be clear. COM asked for criteria for the exceptional circumstances but it is hard to provide comments to something we do not support. FATF is spending a lot of time on consistency on assessment, what about COM? Is COM envisageing this kind of process? Exit criteria should be more specific and a suggestion would be to refer to specific criteria referred to in the methodology - the listing criteria mentioned in para 3, to ensure the same order/wording is followed and no confusion occurs.

One MS supported the point made by some MS on exit criteria being different from the listing criteria and raised attention to fair treatment of countries delisted by FATF, but not by the EU; asked about the details of the involvement of the EGMLTF; supported the COM becoming observer to FSRBs and suggested to establish an early warning mechanism with EGMLTF.

COM explained that engagement with third countries is foreseen, through the network of the EU delegations, so no one will be taken by surprise. A transparent working method applies also to the involvement of EGMLTF throughout the process. To ensure consistency of COM assessment, a "quality control" within the COM is considered within the team involved. On the exit criteria, FATF approach is followed, *i.e.* being stricter for the delisting than for the listing. COM will follow the same approach, being more demanding for delisting countries subject to EU assessment because it is important to avoid countries cherry picking on where to improve and ensuring that they comply with a core set of rules. First, technical compliance (if legislation compliant on paper) on fundamental issues is checked, second effectiveness will be assessed (e.g. in ensuring the transparency of BO – and whether the progress on improvement effectiveness on all building blocks is tangible and positive. COM will not make a mechanical exercise, by just taking over the assessments done by FATF, but its own assessment. Therefore, when we are talking about compliance with CDD or effectiveness on BO, COM will use its own benchmark(s) - sometimes stricter than FATF's, such as BO transparency. For the EU autonomous assessment, COM will do its autonomous analysis based on our autonomous benchmark.

As regards timing for the delisting, COM confirmed that countries delisted by FATF will be reviewed as a matter of priority. A rapid stand for Uganda, Guyana and other countries delisted by FATF is needed. COM noted that we would be in a better position to do that, if we managed to escape delisting of Afghanistan for unjustified reason, setting a bad precedent at FATF level. COM needs to take the consequences of this FATF decision, and one of them is that it will apply the precautionary principle and do its own assessment for

the delisting, to avoid delisting countries that still present strategic deficiencies according to EU criteria.

Another MS mentioned that the FAT/ICRG procedure is mentioned, though not in details in the draft methodology, while it is confidential and requested COM to ask FATF before making any public reference; pointed at a language issue on using 'efficiency' only as regards criteria, not building blocks; mentioned that delisting by FATF is indeed difficult once listed, but this has to do with the elaboration of the Action Plan and the link to IOs; and pointed at the fact that Europol cannot check compliance with AML/CTF standards.

COM explained that as regards description of ICRG procedure, it is intended to consult the FATF secretariat before making it public, although while the FATF document is confidential, what is made public is not the document itself, but only the information within that should be in the public domain. This is an issue in terms of fair treatment for third countries, but has also to do with political responsibility and accountability as it is difficult to defend the ICRG and listing process when it cannot be explained in detail how the listing process takes place. As effectiveness, all suggestions to improve the document on this point are welcomed, because COM would like to ensure that effectiveness is checked when assessing each building blocks. On effectiveness in investigation and prosecution of ML, advise from MS is also welcome on whether this be should be covered in building block nr 1 (criminalization) or nr 4 (powers and procedures of competent authorities). From EUROPOL, COM need the threat assessment that will be cross-matched with COM assessment on compliance on AML/CFT.

Several MS asked that another draft is circulated, allowing a last round of comments. COM suggestion to receiving written comments in 1 week time was agreed by consensus.

Information point only. The EGMLTF members were invited to send written comments by 12 February – no conclusions or vote

- **Delegated Acts on high risk third countries** – state of play

COM informed that for the delegated act adding Ethiopia, neither EP nor Council objected (none of them issued any rejection), hence the delegated act was published in the OJ and entered into force.

Pending the assessment of the HRTC by EU, we need to continue update according to FATF + application of this precautionary principle for delisted countries by FATF.

This is the approach followed by COM for the last delegated act adding Tunisia, Sri Lanka, and Trinidad and Tobago to the EU list. This one was more controversial in the EP, where Tunisian authorities were extremely active. COM informed of the follow up with Tunisian authorities, and maintained its view regarding the strategic deficiencies shown by Tunisia which justified at the listing moment and still justifies its inclusion on the EU list. COM welcome the high level political commitment taken by Tunisia in this respect, took note that they are accelerated in the Action Plan, and expressed willingness to further support Tunisia (strategic partner) in providing Technical Assistance. A TAIEX mission to support Tunisia in implementing the FATF Action Plan is currently under preparation and MS were invited to propose experts to join the TAIEX mission.

Tunisia has interest in working on IO5: Transparency of Beneficial Ownership; they would be interested in having this covered up by this TAIEX mission.

This main message was issued also through a formal declaration from the EC to the EP, to make sure/give reassurance that Tunisia will be delisted once the action plan is implemented fully and a conclusion on-site visit by FATF will take place. COM bottom

line is to ensure that FATF Action Plan is implemented before any discussion on the removal.

COM expressed this position at the EP, at the ECON/LIBE committee on 22/1, the vote was extremely narrow, but ultimately the ECON/LIBE did not reject the delegated act and did not vote a motion for rejection. The issue escalated to the Plenary where a new motion was put to vote and ultimately the EP did not have a majority to reject the delegated act (narrow vote: 19 votes were only missing to block the delegated act).

It means this delegated act will be published in the OJ and will enter into force. COM is aware that this inclusion of Tunisia has been much debated in many MS, but there is a collective responsibility of COM and MS for the decisions taken in FATF. Consistency is needed when strategic deficiencies are identified by FATF and the same applies with regard to the implication it has for the EU list.

The vote in the EP confirms in COM view the approach that the EC has to have a FATF+ approach: continue assessing countries identified as a bottom line by FATF and complementing the assessment by adding EU additional criteria. COM reminded that listing countries has no name and shame purpose, but the purpose of protecting the EU financial system and supporting third countries to effectively implement AML/CTF standards.

Information point only – no conclusions or vote

*3.6 Preparation of the FATF meetings of 19 February – 23 February 2018 [***Point 7 of the Agenda***]*

- Follow-up to the Heads of Delegations meeting of 24 January *[Point 7.1 of the Agenda]*

The meeting, aimed at preparing the upcoming FATF plenary, covered 5 points:

- R 13 on correspondent banking
- R 6 on targeted financial sanctions
- Legal status of FATF
- Iran
- Tunisia

A exchange of views with MS followed on agenda of the February FATF meeting

Information point only – no conclusions or vote

*3.5 Any other business [***Point 8 of the Agenda***]*

- Updating AML data from courts and prosecution services

COM updated the EGMLTF members about AML data from courts and prosecution services. A good cooperation between services in charge of the functioning of the justice system and the unit in charge of AML/CTF led to requesting MS additional statistics on court and prosecution data. COM thanked MS for cooperation, especially those that sent already such data and invite the remaining ones to complete or send theirs.

Information point only – no conclusions or vote

4. Conclusions/recommendations/opinions

The EGMLTF did not issue or deliver any recommendations/opinions nor was any issue put to a vote.

5. Next meeting

The next meeting should take place on 15 June 2018.

6. List of participants

Annex (1 page)

List of participants

Representing Members Organisation

Financial Market Authority (Austria)
Ministry of Finance (Austria)
National Bank of Belgium
SPF Finances Treasury (Belgium)
Belgian FIU (Cellule de traitement des informations financières)
Bulgarian National Bank
Bulgarian FIU (FID- SANS)
Central Bank of Cyprus
Financial Analytical Office (Czech Republic)
Danish Financial Supervisory Authority
Estonian Ministry of Finance
Permanent Representation of Finland to the EU
Ministry of Finance - French Treasury
Permanent Representation of Germany to the EU
Bank of Greece
Ministry for National Economy (Hungary)
Department of Finance (Ireland)
UIF (Italy)
Ministry of Economy and Finance (Italy)
Bank of Italy
Ministry of Finance of the Republic of Latvia
Financial Intelligence Unit (Liechtenstein)
Bank of Lithuania
Financial sector supervisory authority (Luxembourg)
Financial Intelligence Analysis Unit (Malta)
Ministry of Finance (the Netherlands)
Ministry of Finance (Poland)
Banco de Portugal
AML/CFT Coordination Commission (Portugal)
National Office for Prevention and Control of Money Laundering (Romania)
Financial Intelligence Unit of the Slovak Republic / Ministry of Interior of the Slovak Republic
Ministry of Finance, Office for Money Laundering Prevention (Slovenia)
Ministry of Economy, Industry and Competitiveness (Spain)
Ministry of Finance (Sweden)
HM Treasury (United Kingdom)

Representing other public entities (Observers)
AMLC/ESA
Financial market supervisory authority FMA (Liechtenstein)
European Banking Authority (EBA)
Europol

EU
European Commission
European Parliament