Minutes

18th Meeting of the Expert group on Money Laundering and Terrorist Financing
4-5 October 2018, Brussels

1. Adoption of Agenda and minutes of the EGMLTF meeting of 11 September 2018

The Chair welcomed the participants to the 18th EGMLTF meeting. The Chair informed that the Commission received written comments from several members that were all taken on board. The final version of the Minutes of 11/9/2018 will be circulated to the Expert Group.

2. List of points discussed

Issues relating to the 4th AMLD

The Commission updated the Member States on the current state of play regarding open non-communication infringement cases. In 2017 the Commission opened infringement cases against 20 MS which have not been closed yet. In July 2018 it decided to refer to the Court of Justice those MS that still did not complete the transposition of the 4th AMLD. The Commission is currently assessing if the laws notified by the MS completely transpose the provisions of the 4th AMLD before deciding on either closing or continuing the infringement procedure against individual Member States.

Regarding the 5th AMLD, the Commission reminded the delegations that this directive entered into force on 9/7/2018 and that the Member States have to implement it by 10/1/2020. Later deadlines have been established in relation to the BO register for trusts (10/03/2020) and the centralised bank registers (10/09/2020). The Commission raised awareness on the currently special situation given that it will have to assess the transposition of the 4th AMLD for those MS which still did not complete the transposition at the same time as the transposition of the 5th AMLD.

As regards the notification obligations under the AMLD (e.g. gambling exemptions), the Commission asked those MS which still did not fill in the table circulated in October 2017 to do it as soon as possible. The concerned MS will be contacted bilaterally.

The Member States informed the Commission on the state of play of the transposition laws. On compliance checking for the 4th AMLD, one MS asked if it is possible to have some early indications on this so as to know how to proceed correctly when drafting the transposition for the 5th AMLD. The Commission agreed in principle and said that it considers sharing informally the results of the compliance checks for the 4th AMLD so as to help the Member States in the transposition of the 5th AMLD, but highlighted that this informal communication will not represent the official position of the Commission. The Commission also suggested to the Member States, especially to those with open infringement procedures, to point to the extent possible at the articles that transpose a certain provision of the Directive.

SNRA and NRA

Before informing the delegations about the ongoing preparations for the next SNRA, the Commission gave the floor to Jože Štrus from DJ JUST/Justice policy and rule of law unit who presented the state of play of the compilation and gathering of data on ML offences and the functioning of courts and prosecution. In view of complying with the obligations

stemming from the AMLD as of June 2017, MS improved their capacity to collect data on the judicial phases of the national AML regime. The 2018 EU Justice Scoreboard presents updated data on the length of judicial proceedings dealing with ML offences as well as some elements of the organization of the prosecution services. For 2018 the Commission plans to do two charts: one for the courts and one for the prosecution services. The reference for court and prosecution data will be 2017. Also, there will be some fine-tuning on the organisational aspects of prosecution services. The Commission will send the short questionnaire for the data collection on this matter by mid-October and expects to receive the MS' reply by mid-November.

Regarding the SNRA, the Commission recalled to the delegations that the ongoing SNRA was launched in June and that the first step of this exercise was to have a follow-up of the recommendations set up in the previous SNRA. For this, the Commission has sent some annexes to the MS to assemble the information about recommendations as well as some templates about statistics mainly for the non-financial sector. The initial established deadline was September which at the request of the MS has been extended to October 1st. Considering that the Commission received around 60% of the answers, it encouraged the other remaining MS to send the required information by latest end of October. Also, the Commission informed the delegations that it plans to organise a dedicated meeting in mid-November to assess every sector included in the SNRA. The meeting is conceived as a working session and platform to present the Commission's assessment of the replies received from the MS. For logistics reasons, the Commission asked the MS to inform back in advance on how many people and who precisely would be interested to participate in this meeting. It also suggested that this planned dedicated meeting might be combined with the transposition workshop.

Asked by a MS which statistics of the SNRA are needed, the Commission replied that it expects to receive the statistics that have been finalised in 2017. Another MS was interested to find out the legal basis for the collection of data for courts and prosecution. The Commission explained that the legal basis for the collection of these data is article 44 of the 5th AMLD as it was revised to include comprehensive statistical data, but if necessary it can offer more details and clarify this issue horizontally with the concerned MS.

Other two MS asked how to fill in the Annex I of the SNRA and if they should reply only to the recommendations made to the Member States. The Commission replied that the first step is to have a follow-up on the recommendations addressed to the MS and stated in the SNRA. The Commission clarified that this corresponds to the first part of the exercise, meaning to the follow-up of the SNRA I. In parallel, the Commission is launching SNRA II which implies an update on the new risks in the market for 2019.

Another MS asked more information about the meeting planned for November on the SNRA, precisely if it is conceived as covering SNRA I and the follow-up or SNRA II. The Commission clarified that the purpose of the November meeting is to have a discussion on the basis of the replies received from the MS both on the follow-up recommendations in the SNRA I as well as on the state of play on the new risks. In addition, the Commission reminded the Member States that in what concerns the NRA they have a legal obligation under article 7 (5) of the AMLD to notify their national risk assessments to the ESAs. It also informed the delegations that they will receive an email in the coming days with the contact details of the three ESAs.

Other Commission Initiatives – Information by the Commission

CRD/CRR amendments proposed by the EP – FISMA

DG FISMA updated the delegations on the CRD/CRR amendments proposed by the EP. They introduce an explicit obligation of cooperation and information exchange between prudential authorities, AML supervisory authorities and FIUs. The added value of these amendments in addition to the already existing obligations and information exchange provisions introduced in the 5th AMLD is that on the one hand they add an explicit cross-border dimension to such obligations and on the other they are more targeted at prudential supervisors to eliminate any remaining concerns about the confidentiality obligations the prudential supervisors are bound by. The amendments are currently discussed in the trilogues.

Asked by a MS what kind of information exchange these amendments envisage, DG FISMA replied that only the information that concerns the tasks of other authorities and gave two examples. For instance, if the prudential supervisor stumbles upon the findings that are relevant for the AML supervision, he is under the obligation to share these findings with AML supervisors. Also, on request, if the FIU or the AML supervisor is seeking some sort of input or information from prudential supervisors and has a reasoned request for a specific purpose, the prudential supervisor will be under the obligation to share this information. Replying to a question regarding the scope of CRD and which AML supervisors at the national level would be obliged to exchange information, DG FISMA explained that the scope of CRD in terms of entities is essentially credit institutions and investment firms and it is meant as AML supervisors of those respective types of entities. It also added that CRD can't oblige the supervisors of other types of entities to exchange this information. While agreeing in principle with the cooperation between the FIUs and prudential authorities, another MS raised awareness to the risky situations this cooperation might bring. The concerned MS explained that giving access to prudential supervisors to some information on particular individuals (e.g. managers of banks) might be controversial because it means they are given access to something which is not confirmed, but only suspicious of money laundering, which in turn might be sensitive in terms of protecting the rights of the individual. DG FISMA clarified that these amendments do not represent a positive obligation to indiscriminately share or disseminate any information. Rather they are meant as removal of barriers to either receiving some information/request or to getting one the FIU or prudential supervisor believes would be useful and can be shared with the other authority. Moreover, the amendments are meant at eliminating any sort of doubts that the authority willing to share this information is somehow still under the restriction, especially in cross-border contacts. Asked by ECB if the amendments proposed by the EP should be understood as a two-way obligation, DG FISMA confirmed that they are not conceived only for prudential authorities, but also for the competent authorities, meaning AML supervisors and FIUs.

Crowdfunding proposal - DG FISMA

On March 8/2018, the Commission published a FinTech Action Plan that was accompanied by a proposal for a regulation to set up crowdfunding platforms. This proposal establishes a one stop shop access to the EU market, thus helping crowdfunding platforms in overcoming the barriers that they face in operating cross-border. In general terms, it provides tailored rules for European crowdfunding service providers covering both investment-based and landing based business models. Also, it defines the requirements the crowdfunding service providers have to fulfil in order to get an authorisation from ESMA. Therefore, ESMA is the authority

which will give the authorisation for these crowdfunding platforms. The element related to money laundering is that in the authorisation process there will be a requirement for ESMA to check the applicants on whether they have money laundering or other relevant convictions. EBA took the floor and shared an EBA staff view regarding two points. The first one touched upon the proposed mix of regimes. Given that the proposal does not mention explicitly that all crowdfunding platforms will be subjected to the same regime and the fact that there was a clear risk associated with these platforms, EBA thinks it is important to potentially bring all crowdfunding platforms within the scope of the AMLD, irrespective of which other regime they might fall under. The second point touched upon authorisation. From EBA's point of view, it is important that the proposal makes clear that ML/TF risks do not only stem from the fact that someone has been convicted of ML/TF, but also from the activity of a particular person. The Commission encouraged the delegations to follow up this proposal nationally and to discuss it with their counterparts.

Electronic identification and remote KYC (CDD) processes

The Commission presented the state of play of work in the Expert group on eIdentification and remote KYC (CDD) processes. The main task of this group is to provide expertise to the EC in the form of opinions, recommendations or reports in the financial sector area. The Expert group is composed of 36 persons belonging to the EGMLTF (7 experts from DE, DK, EE, IT, LV, LT ES), the eIDAS Cooperation Network (7 experts from BE, DE, FR, LU, NL, PT, UK), the Joint Committee of European Supervisory Authorities (7 persons from AT, FI, FR IE, LU, NL, PT) and 15 financial institutions and consumer organisations (13 of 15 come from the financial industry and 2 of 15 are consumer or user organisations).

The Commission informed the delegations that the Expert group had two meetings and a workshop so far. The main takeaways of the 1st meeting (9 April 2018) were the presentations made by DG CONNECT, DG FISMA and DG JUST; a study on "eID and digital on-boarding: mapping and analysis of existing on-boarding bank practices across the EU"; and the circulation of a questionnaire which identified two priority issues. During the 2nd meeting (10 July 2018) technical service providers presented on how they identify people. In addition, there was a presentation on the findings of the questionnaire followed by a discussion on the consolidation of experts' input to the questionnaire. The 3rd meeting will be organised by DG JUST, will take place on November 9, 2018 and will address matters related to the two priority issues working in two groups. The 1st priority group will (a) establish recommendations on best practices for remote on-boarding/identification in the banking sector (or that may be used in the banking sector) and (b) how eIDAS and other innovative processes may be used to comply with AML requirements. The 2nd priority group will (a) address the need for and the scope of a framework for portable KYC/CDD solutions in particular in the banking sector and (b) assess the necessary minimum set of attributes necessary for CDD purposes in the banking sector and the appropriate level of assurance as per eIDAS (high, substantial and low) vis-à-vis various sets/types of attributes relevant for the KYC/CDD processes.

Regarding the 3rd meeting that will take place on November 9, 2018, the Commission shared with the delegations some of the points that it intended to have on the agenda such as fake eIDs, consumers' interest, data protection – access to public KYC utilities. It also briefed them on a workshop with providers of remote/digital on boarding solutions to banks that took place on September 28, 2018. Given that some members of the EGMLTF are also part of the Expert group on eIdentification and remote KYC (CDD) processes, the Commission invited them to share their work experience in the group.

Cash controls regulation – TAXUD

DG TAXUD made a presentation on the cash controls proposal which contains four main issues: imperfect coverage of movements (post and freight); information exchange; sub-threshold amounts; definition of 'cash' – Annex I. During the trilogues which took place between March and May 2018, a provisional agreement was reached on May 23. The EP adopted text in plenary on September 12 and the Council adopted text in an ECOFIN meeting on October 2. Publication in OJ is expected at the end of October. Concerning the new features, TAXUD informed the delegations that the essential principles of the Commission's proposal were maintained – definition of cash, sub threshold amounts, risk analysis; the cash sent by post or freight will require a disclosure document instead of a mandatory declaration; the cash declaration itself will contain new data fields such as address, ID number or VAT number; controls should be based on risk criteria including risk assessments produced by Commission and FIUs - art. 5 (4); Customs will have a 15 days to send data to national FIUs – art. 9; "The Member States shall ensure that the FIU of the Member State in question exchange such information with the relevant FIUs of the other Member States in accordance with Article 53(1) of Directive (EU) 2015/849". TAXUD informed the experts that the Commission issued a declaration to the co-legislators stating that having this last text in this regulation will not affect the 5th AMLD. Another new feature regards the article 16 on the implementing acts where CIS (managed by OLAF) will be the IT tool used for information exchange between Customs and FIU's and between Customs authorities of the Member States.

During a tour the table, one of the MS asked questions on OLAF's work on CIS and on the checking at the border of prepaid cards. TAXUD answered that OLAF assured them the CIS will be ready to be delivered when required. CIS is one of the topics in the implementing act which will follow a certain procedure. The first step is the establishment of a committee where all the MS will be represented and where the decisions will have to be taken by qualified majority. OLAF will be present to start the proceeding when the first meeting on the implementing act in the committee will take place. Concerning prepaid cards and the checking at the border, TAXUD explained that even if they are included in the definition of cash, prepaid cards are not at the moment in Annex I. Therefore prepaid cards are not being currently covered because there are not enough evidences that they are being used for criminal activities. Furthermore, portable card readers are very expensive and the Member States will have to be consulted on whether there is the need to invest at this point in this technology. Another MS requested for the circulation of TAXUD's presentation and asked how the definition of cash is being changed or amended in the regulation. TAXUD explained that the basic act contains a part of the definition of cash and added that in what concerns illiquid commodities the current focus is gold, but in the future the concept could be enlarged so as to include diamonds or prepaid cards. The EP wanted to clarify what is the value of the Commission's declaration with regards to the intention of the text since the co-legislator's intention was to have the information exchange mandatory. TAXUD replied that their legislation is complementing the AMLD and that they do not want to legislate directly on the competencies of the AML supervision. The Commission encouraged the delegations to contact their counterparts in the customs authorities - who most probably will represent the MS in the committee that will be established for the adoption of the implementing act - so as to make certain that the concerns raised during this EGMLTF meeting will be taken on board when the implementing act will be adopted.

Proposal on the exchange of financial information

The Commission presented the current state of the negotiations taking place at the Council and EP on the proposal concerning the exchange of financial information. At the Council, five rounds of negotiations already took place. Another one is scheduled for October 22. From the Commission's perspective, the negotiations are disappointing because the obligation to exchange information between the FIUs and law enforcement is no longer reflected in the revised text. Concerning the EP, it has issued its draft report on this proposal and the members of the EP are invited to present amendments. A first discussion will take place on October 15 at the LIBE Committee which aims to adopt a report by December and then have an admittance of the final report by plenary in January. ECON Committee of the EP also delivered a draft opinion to the LIBE Committee. The Commission will send to the delegations the links to both documents.

AMLC and supervision

Update on the work of the AMLC by the Chair of the AMLC

Jens Fuerhoff, the chair of the AMLC, updated the experts on the latest AMLC meeting specifically on: a) the guidelines on supervisory incorporation of which ESAs believe may potentially improve the effectiveness of the AMLCFT supervision within the EU (AMLC is willing to publish a consultation paper on these guidelines); b) the draft developed concerning the agreement between the ECB and the NCAs in line with article 57a of the 5th AMLD; c) the first draft on the 2nd joint opinion on the ML/TF risks affecting the EU's financial sector as requested by article 6 of AMLD; d) the first amended draft on the guidelines on how to incorporate changes introduced by the 5th AMLD; e) a workshop organised by ESAs for the competent authorities on financial crime risks associated with e-money.

The Commission invited the Member States to provide input on the joint opinion that will have to be delivered for the SNRA and to pay attention to the agreement with ECB which is meant to be binding, comprehensive and ready before the imposed deadline of 10 January 2019.

The new amendment to the EBA regulation and the Communication

The Commission explained that last autumn it has tabled a proposal to amend the powers and the mandate in the founding regulations of the 3 ESAs and that on September 12 it tabled a proposal to amend its own proposal. The Commission's proposal presents the following changes: a) centralise the competencies on money laundering of EIOPA and ESMA into the EBA; b) replace the current AMLC committee with a new AMLC committee consisting of the chairs of the national AML supervisors; c) increase the powers of the EBA to issue common standards, to carry our periodic reviews of the NSAs, to do risk assessments; d) give the EBA a role in facilitating cooperation with high risk 3rd countries; e) enhance the powers of the EBA to ensure breaches of AML rules are consistently investigated. The Member States were asked to coordinate domestically in their reactions to these proposals. Also, they have been informed that the EFC is currently working towards an action plan on the non-legal actions and that they needed to send their written comments by October 5, 2018. On the longer term perspective (Chapter IV), the Commission shared with the delegations the possibility to transform in the future all or only parts of the AMLD into a regulation and to establish an EU AML authority

General comments by the Member States on the new amendment to the EBA regulation and the Communication

The majority of the MS supported in principle the Commission's initiatives, but stressed that considering their complexity more time will be needed in order to carefully consider them. While taking note of the raised concerns, the Commission stated that the urgency to act and tackle some problems is justified by the latest events/scandals that took place and added that at the level of the Council and the EP there is a strong commitment to proceed rapidly on this topic. The Commission encouraged the MS to react in due time.

One Member State asked about the Commission's role in the preparation of the action plan and regretted the lack of any impact assessments. The Commission clarified that the action plan reflects the Communication issued on September 12, 2018 and added that the Commission has been exchanging views and giving input on this matter in the FSC forum.

Regarding an issues note received from the FSC, one Member State was interested to know how to proceed on this considering the short time the MS were given to react and the fact that FSC does not contain any AML experts. The Commission acknowledged that the FSC is not a committee composed of AML experts, but stressed that this is the procedure established by the Council and that the deadlines will continue to be short both on the legislative and non-legislative part.

In response to a MS' request for more details on the cross-border colleges and guidelines mentioned by AMLC, EBA clarified that these colleges' guidelines are not regulatory technical standards. Nonetheless it is important to be taken seriously and used effectively by all competent authorities. On the MoU that EBA's is currently facilitating, the MS were strongly invited to speak with all competent authorities that have AML supervisory responsibilities in relation to financial institutions and to liaise with their counterparts as well as to take into consideration the strict deadline. In addition, the Commission stressed that currently it is crucial to identify the supervisors for the financial sector and to communicate them to the EBA. The Commission reminded that the agreement with ECB needs to be signed by January 2019.

While supporting the improvement of the effectiveness of the AML/CFT supervision, one MS raised awareness to the extra administrative burden some of the initiatives in the action plan might create for small national agencies. The same MS positioned itself in favour of using the already existing platforms so as to avoid any potential duplication of what is already done at the national level. Another MS shared its reluctance towards the regulation that is currently at stake for the ESAs review and raised concerns about the fast paced things are moving.

FIU Report

The Commission presented the questionnaire on FIU cooperation which has been submitted via e-mail to the EGMLTF members the previous day. The questionnaire relates to a report which derives from the Commission's legal obligation imposed in article 65 (2) of the 5th AMLD. As regards to the context, the Commission reminded that during the negotiations of the 5th AMLD, the EP tabled an amendment asking the setting up of an EU FIU with broad competences. The result of trilogues led to the above-mentioned obligation of writing an FIU report by 1 June 2019 encompassing three elements: a) the assessment of the framework for FIUs cooperation with third countries; b) the challenges to and opportunities for FIU-to-FIU cooperation within the EU; c) the possibility to establish a coordination and support mechanism at the EU level for the FIUs which basically refers to the original idea of the EP to establish an EU FIU. The Commission informed the delegations that as part of this

assessment, it has launched a broad consultation process to collect input from all relevant stakeholder sectors. A similar questionnaire has been presented and submitted to the MS FIUs, and there will be dedicated questionnaires submitted to the industry as well. The aim of the questionnaire sent to the EGMLTF members is to get various views from the governments of the MS. Therefore, the Commission would not advise to delegate the responding to the FIUs because they have also been engaged in this exercise so as to receive their responses from an operational perspective. The Commission's expectation is to receive two different/separate replies, one from the policymakers and one from the operational units.

Some MS welcomed the timely launch of the consultation process and the promise of the Commission that there will be another stage in the process where the Member States will be involved before the publication of the report. A Member state reminded that some of the questions raised address issues which are reflected in ongoing workstreams in the context of the FIU Platform. The Commission replied that the idea is to explore possibilities to deal with these issues beyond the boundaries of the current cooperation framework stated in article 51 of the AMLD.

Regarding the first part of the questionnaire on the *FIU-to-FIU cooperation with third countries,* the Commission stated it is aware that this type of cooperation with third countries is taking place due to the compliance obligation Member States have under the FATF. On the first part of the questionnaire, the Commission would like to know whether Member States have operational arrangements or MoUs with third countries in this regard, if there are difficulties in getting the needed information and if the exchange of data with third countries complies with EU data protection rules. Some MS were of the opinion that, as opposed to the interpretation of the Commission, their FIUs are subject to the data protection police directive in this context. The Commission replied that irrespective of the legal basis, it would like to get information on the framework MS apply for the protection of personal data in the context of exchanging financial information with third countries. At the suggestion of a Member State, the Commission is willing to invite its data protection experts to the next EGMLTF discussion on this topic so that they can better explain the understanding of the Commission on this particular point.

Regarding the second part of the questionnaire on *the cooperation between FIUs and obliged entities*, the Commission would like to explore if there is a dialogue between the FIUs and obliged entities to give feedback mechanism, if there is an added value in centralizing the collection of STRs/SARs with cross-border implication into one EU body and if there are any arguments from economic/budgetary etc. aspects in favor of such centralization. One Member State reacted that any potential centralization of this kind would anticipate the harmonization of the diverging needs in terms of form and content of the reporting which in turn will add a layer of practical difficulty.

Regarding the third part of the questionnaire on *FIU-to-FIU within the EU*, the Commission would like to explore if there is an added value in e.g. issuing practical guidance outputs on cross-border reporting and dissemination or if such deliverables could have legally binding character. One Member State suggested it would have been more useful to answer this question from the QE after the output of the FIU Platform Working Group on cross-border dissemination. It also added that standardization could bring benefits in terms of the content of the reports, but not in terms of their formats. Another Member State insisted on its preference to have in the first place a correct understanding regarding the needs and existing options.

Regarding the last part of the questionnaire on *AML Supervision*, the Commission would like to collect views on the possibility to centralize at the EU level some functions of the

supervisory work as well as to explore what MS think about the combination of the supervisory responsibilities in the AML and prudential field at the national level.

The Commission stated again that this exercise is designed as an open consultation which will result in a report and asked the Member States to respond to the questionnaire by November 9, 2018.

High risk third countries

At the last meeting, members agreed with the list of scoping and priority 1. Hence, the Commission services are now proceeding on this basis and prepare the assessment of priority 1 countries. The Commission informed participants that it started making AML/CFT assessments. Those will be shared soon with EGMLTF for consultation.

The purpose of the consultation is to allow a fact check with regard to the AML/CFT assessment. Members will be consulted in order to receive contributions on four aspects:

• Confirm the factual assessment made by Commission services using several information sources (in particular FATF reports);

• Indicate whether important information sources have been missed / should be considered for the assessment (i.e. if a new FATF/FSRB/ICRG document has been issued and not considered by Commission services);

• Enrich the analysis with information collected directly by MS. We invite MS to deliver specific information they may have on certain third countries through their various tools (close political ties, diplomatic presences, technical assistance etc.);

• Assess the level of cooperation by third countries authorities with MS authorities. We expect contributions regarding the level of cooperation of third countries with MS authorities. This is a key criterion for the methodology. FATF/FSRB information gives a picture on international cooperation – but it provides a limited insight specifically on cooperation with MS authorities. Please flag situations where your competent authorities face difficulties or non-cooperative attitudes in cooperation with certain third countries.

Member States were reminded about the rules on information protection and operational aspects of the upcoming consultation (consultation via single point of contact – SPOC – only). All members were requested to appoint a SPOC.

Members States discussed on the number of fiches that will be shared, the time given for the consultation, timing of the next milestones, use of information submitted and operational aspects concerning the dissemination channels. They also asked how the Commission intends to inform and engage with third countries. The Commission reiterated that the methodology is public so as to give information in advance to any third country. This methodology provides that third countries included in the review will be informed – thus ensuring that no third country is taken by surprise. Members stressed that stakeholders would appreciate to have in the future a consolidated version of the EU list. Both public and private sector require a consolidated version of the list for easier processing. The Commission took account of this request and will give appropriate follow up.

Preparation of the FATF meetings of 15 October-19 October 2018

<u>Approach towards virtual currencies and crypto-asset providers</u>

The Commission recalled that during the last Intersessional Meeting in September, delegations presented:

• several different options to integrate either in the Glossary and/or Recommendations the requirements to which VASPs should be submitted (1);

• possible definitions of virtual assets and virtual assets service providers (VASP) including the scope of activities and operations involving virtual assets and the types of entities that should be subject to AML/CFT oversight (2).

Concerning the options for VASPs requirements integration, two main options were proposed: the 1st consisted in amending the definition of "Financial Institutions" in the Glossary, stating that the requirements applied to FIs are also applicable to virtual asset service providers (VASPs); the 2nd one entailed amending R.15 to set out the specific Recommendations applicable to VASPs, and the model of regulation that VASPs are subject to.

The Commission (JUST) explained that it is still considering the potential advantages of the different options, either imposing the providers of virtual assets/currencies/crypto-assets the same requirements applied to financial institutions (without their formal status), considering them as DNFBPs (i.e. a type of obliged entity apart and not financial institutions, submitted to recommendations 22, 23, 28) or simply as "new technologies" (submitted to recommendation 15). Questions remained on the potential impact of this new requirement on both the internal market, but also on the EU financial sectorial regulation, notably the possible need to create a new registration regime.

The Commission (FISMA) also explained that an assessment of the different virtual assets with the help of the ESAs is on-going with the objective to finish a comprehensive mapping by the end of the year.

During the tour de table the majority of the MS expressed their preference for the 1st option. They considered this solution as being technologically neutral and allowing potential future new actors to integrate immediately its scope. Only a few MS expressed their doubts about this option, defending the principle of keeping as much as possible the stability of the recommendations. By applying the whole bunch of FI recommendations to the VASPs, there would be a need to create exemptions in the FATF recommendations (rules on correspondent banking could not apply to VASPs). Only one delegation supported the 2nd option.

Some delegations excluded the idea of giving the VASPs the status of DNFBP because on the one hand their supervision is not equal and strong enough in all MS, and on the other hand the activities described in the recommendations targeting DNFBPs do not fit with the VASP. However, the Commission recalled that in the AMLD, VCs were assimilated to DNBPs. Many delegations also confirmed they already have a regulation on VASPs that include their registration, as required by AMLD 5. Some Member states already did a step further, introducing licensing processes for VASPs providing services on VA having the status of means of payments or financial instruments traded on regulated markets. A delegation considered that giving to VASPs the status of financial instruments and to license them internally should not be an issue in terms of coherence with regards to both the AMLD compliance and possible improvements at the FATF level.

The Commission expressed its concerns with regards to the 1st option and stated that the 2nd one appears more proportionate giving the explicit wording on registering and licencing. The Commission noted that since many MS started licensing some of the VA, a mapping could be useful so as to understand better where the MS are standing in their legislation. The Commission hoped that a common position could be found during the FATF meeting.

Concerning the proposed definition of virtual assets, « a digital representation of value that can be digitally traded and used for payment or investment purposes », the lack of legal tender of most of the VA may pose some problems. FATF definition states that VA are a medium of exchange that can be traded. But VA can be also transferred without being traded and the definition may lead to confusion if it stays as it stands. In the EU definition of "virtual currency" if the VAs have no legal tender, they can be transferred without being traded.

Concerning the inclusion of Virtual-Virtual Exchanges, the Commission recalled that AMLD5 considers crypto to fiat exchanges, but not virtual to virtual. It explained its willingness to have close-loop exchange systems and mixers taken into consideration and the possibility to ask for additional wording in an explicative note or guidance.

Concerning the ICOs (Initial coins offers), two delegations supported the need to include the ICO issuers in the scope of the definition as they already do KYC diligences so as to be allowed to enter the banking system. The focus must be on the ones that issue and place the currencies, as the issuers tend to place their products directly to the customers without intermediary. On the contrary, these delegations thought there was no need to specify the nature of the virtual assets at stake in the ICO. These delegations also thought that to regulate the secondary market of these coins would be much more complicated.

A delegation underlined an overlapping of the different activities in the current definition. For instance, the virtual currency distributed in an ICO could be traded to potential investors in exchange of other VC (virtual to virtual transaction) or bought with flat currencies (then a virtual to fiat transaction). The delegation pleads for streamlining that point in the coming PDG discussion. Another delegation raised a technical question concerning the need to address in the AML transposition the case of issuers keeping the keys of related virtual assets but not having access to the assets themselves.

Europol expressed it had no definitive opinion on the proposed options at stake. However, it agreed on the need to ensure that CDDs are applied the moment the coins are issued. The Commission recalled that ICOs are not intermediaries but companies seeking to be financed. Therefore, the need is to regulate the act of raising capital and not the coin itself according to its nature. Furthermore, as there are no intermediaries in the transaction, secondary market regulation was not considered to be necessary.

<u>Other issues that will be discussed at the FATF October Plenary meeting</u>

- PDG work programme

The EGMLTF discussed the work programme of the Policy and Development Group, including the two proposed projects on proliferation financing and beneficial ownership. In particular, the scope and extent of the proposed project on proliferation financing were addressed during the discussion.

- RBA guidance for lawyers

In relation to the draft RBA guidance for lawyers , the Chair stressed the importance of the issue of legal privilege,, as well as the key role of gatekeepers played by legal professional and lawyers in preventing and combating ML and TF. It was recalled that the issue of attorney-client privilege is key in this regard, as it has been highlighted in the findings of the PANA committee, as well as in the SNRA. There is a need to strike the right balance between

the principle of lawyer-client privilege and the prevention of crimes, as it has also been indicated in the case-law of the ECtHR and the ECJ.

MERs of the United Kingdom: general discussion

The EGMLTF heard a detailed presentation by the UK on its draft Mutual Evaluation Report, and discussed the related main issues in view of the upcoming FATF Plenary.

Approach on Rec 13 in upcoming evaluations

The Commission reiterated the well-known issues around correspondent banking and the lack of recognition by the FATF of the supranational aspects of EU law, which ensure that intra-EEA correspondent relationships should be treated as domestic. The discrepancies remain as MS are treated in an inconsistent manner.

The Commission will maintain the line and continue trying to rectify the situation and would rely on the unanimous and active support of MS at every occasion.

MER of AlbaniaThe EGMLTF discussed the quality and consistency issued related to the MER of Albania.

FATF ICRG progress: Bahamas, Botswana, Ghana, Isle of Man

The EGMLTF was informed that at the upcoming ICRG meeting, the discussion will concern mainly four countries, notably The Bahamas, Isle of Man, Ghana and Botswana. For the four of them, the Joint Group reached consensus; in particular, the Joint Group proposed an action plan for The Bahamans, Ghana and Botswana, whereas for the Isle of Man the consensus of the Joint Group was not to develop an Action Plan and to recommend that the Isle of Man be removed from ICRG monitoring.