

Brussels, 9 May 2023

Subject: Trilogue negotiations on AMLA regulation, AML regulation and 6th AML directive

Dear,

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for 215 000 regulated tax professionals from France, Germany, Belgium, Romania, Hungary and Austria. The main role and mission of ETAF is to represent the tax profession at European level in liaising closely with European policy makers in order to promote good legislation in tax and professional matters.

In view of the start of the trilogues on the AMLA regulation, AML regulation and 6th AML directive, ETAF would like to provide you with some statements on the positions of the Council of the EU and of the European Parliament as well as share with you some of our concerns.

As a preliminary remark, ETAF would like to thank all the EU institutions for their respective work on this legislation of utmost importance. We welcome the progress made on finding effective ways to fight money laundering (ML) and financing of terrorism (FT), which not only jeopardise the security of our societies but also the financial stability of the European economy.

Balancing AMLA's powers over the non-financial sector

Effective measures in the area of AML/CFT to combat cross-border organised crime require close coordination and a continuous exchange of experiences between the competent national supervisory authorities and the Financial Intelligence Units (FIUs). This can be done by creating an appropriate EU authority like the AMLA. However, such cooperation must take place in compliance with the national structures and competences of the Member States.

The foreseen powers of the AMLA in the non-financial sector were already too far-reaching in the Commission's proposal. They went beyond a coordinating and advisory role. In our opinion, such a comprehensive supervision in the non-financial sector through the AMLA would be disproportionate. Due to the sector's more heterogenous nature and the lack of harmonisation in terms of requirements, supervision must remain decentralized at the level of Member States. National supervisors can act much faster, more effectively and more appropriately.

Therefore, ETAF welcomes that the Council in its negotiating mandate limited the powers of the AMLA and removed the right of intervention foreseen in Articles 5 (4) and 32 of the AMLA regulation. In this regard, we would like to encourage the Parliament to find a well-balanced compromise together with the Council.

Safeguarding professional secrecy

ETAF supports the effort of the European legislators to replace the existing patchwork of different regulations in Europe by a single rulebook. However, the Parliament extended the Commission's proposal for a new AML regulation in several aspects we find concerning.

In Recitals 9 and 10 and, among others, Article 51 (2) of the AML regulation, the Parliament introduced re-exemptions which, in our view, weaken professional secrecy and endanger the principle of independence of the profession. The exemption of the obligation to report suspicious activities covered by professional secrecy must remain in its entirety. Professional secrecy is a core element of the rule of law and is absolutely necessary to protect the trust between tax advisers and their clients.

Vague legal terms, such as "well-grounded suspicion", not only violate the principle of legal certainty, but are also not suitable for determining which services and actions still fall under the exemption induced by professional secrecy and which lead to the maintenance of the reporting obligation. Dealing with such provisions is not at all practicable for the daily work as an obliged entity.

Consequently, ETAF strongly urges the negotiators to respect the boundaries of professional secrecy and avoid undermining it.

No significant increase of bureaucratic burden

In addition to that, ETAF regards the Parliament's considerable extension of the catalogue of due diligence obligations in the AML regulation with great concern. The necessary work to identify and verify clients as well as beneficial owners in practice means an ever-increasing bureaucratic burden for obliged entities such as tax advisers. We acknowledge the importance of transparency and information, especially on beneficial ownership structures, in the fight against ML/FT, but this should not be achieved entirely at the expense of obliged entities.

Moreover, the added value of this additional information to be collected is questionable. Instead of expanding the catalogue of due diligence obligations, a more risk-based approach and an evaluation of the effectiveness of the due diligence obligations already resulting from the 5th AML directive would be welcomed.

ETAF would like to remind the negotiators that due diligence obligations constitute a high additional bureaucratic burden on top of the obliged entities' main professional activities. On this basis, we would like to see you advocate for rather effective, appropriate and implementable obligations.

Preserving the correct functioning of self-regulatory bodies

Furthermore, ETAF is worried about some provisions in the 6th AML directive concerning the oversight over self-regulatory bodies. By acknowledging that in some Member States self-regulatory bodies are allowed to supervise obliged entities, Article 38 of the directive, in principle, takes into account existing administrative and legal structures on national level.

However, Article 38 also instructs Member States to ensure that a national public authority oversees the self-regulatory bodies. In particular, the rights and powers provided for this authority run the risk of interfering with regulatory traditions on national level. In some Member States, where supervision by self-administration has proven to be a practical and effective model, those provisions could contradict with what supervisory authorities in those countries are legally allowed to exercise.

Thus, ETAF asks the negotiators to take due account of the different legal and supervisory systems and traditions of the Member States.

We hope the trilogues will be the opportunity for co-legislators to address our above-mentioned concerns and trust that you will find a balanced compromise between the political will of having the strongest AML rules possible in the EU and what is practicable in reality for obliged entities.

We thank you for your time and stay at your disposal for any question you might have.

Sincerely yours,



Philippe Arraou
ETAF President