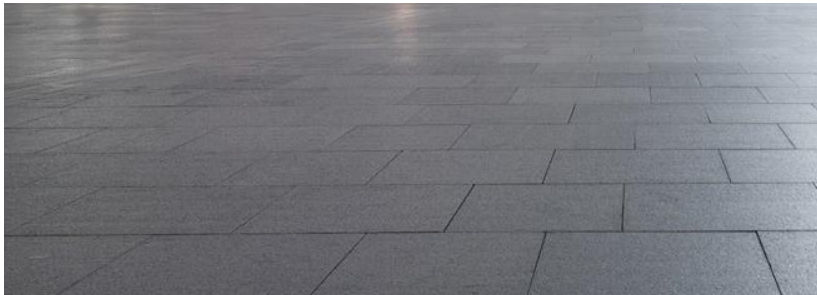


Q4 2021 Financial Crime Quarterly Update

PwC Ireland

October - December 2021



Introduction

Welcome to the third edition of our Financial Crime Quarterly Update, which outlines all of the latest news and regulatory updates within the world of Financial Crime.

Q4 2021 saw the European Council and Parliament begin to update their regulatory framework in order to mitigate the risks posed by the growing transfer and use of crypto currencies and assets, highlighting the increased focus on this area as regulators and firms adapt to this burgeoning market.

Also taking place on the European stage in Q4 was the European Data Protection Supervisor making recommendations on the EC's AML action plan to ensure data protection concerns are balanced against the new AML/CTF measures in the pipeline.

Locally, the CBI has communicated its expectations regarding AML to both the Funds and Payments sectors, reiterating its key focus areas and how these firms should meet them.

We hope you enjoy reading this newsletter, which contains further details on the issues outlined above, and more!

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IRISH FINANCIAL CRIME UPDATES

1

Central Bank of Ireland - AML Bulletin November 2021

On November 11th, 2021, the Central Bank of Ireland (“CBI”) issued the 7th edition of their AML Bulletin, which focused primarily on the Funds sector.

The bulletin confirms that the CBI’s supervisory engagement with the funds’ sector since 2019 have highlighted weaknesses in the areas of:

- Governance;
- Business Risk Assessments;
- Outsourcing; and
- Customer Due Diligence.

The Bulletin notes that the CBI expects regulated Funds and Fund Management Companies to have implemented effective governance, risk and control functions and to be able to demonstrate

- sufficient oversight of the AML/CFT/FS framework to ensure compliance with the requirements of CJA 2010;
- that the identification and management of ML/TF/FS risks to which they are exposed is an iterative and ongoing cornerstone of the Firm’s AML/CFT/FS framework; and
- the continual review and assessment of existing processes and procedures to enhance the AML/CFT/FS framework on an ongoing basis, so that firms are well-positioned to respond to emerging risks, legislative changes and regulatory guidance.

The Central Bank notes that it:

“...will continue to conduct supervisory engagements with Firms in this sector and expects Firms to be in a position to demonstrate that they have reviewed the findings and expectations detailed in this bulletin and, where gaps/weaknesses are identified by firms, sufficient steps have been taken to remediate the identified gaps/weaknesses. In instances where firms fail to demonstrate the necessary remediation to ensure compliance, the Central Bank will determine the appropriate action to undertake, within its full range of its regulatory tools, including where necessary utilising its enforcement powers”.



Department of Justice begins to oversee AML efforts of the Art industry

The Irish Department of Justice has announced that it has begun inspections of art dealers and galleries to review their compliance with the revised Criminal Justice Act, which implemented the Fifth EU AML Directive and brought this industry under the scope of the legislation.

Previously, this industry had not been subject to AML regulation, but was brought under the scope of the European Directives due to the high use of art purchases to launder illicit funds and bring tainted money into the legitimate economy.

Officials from the Department of Justice, along with the Gardaí, informed art dealers in a webinar in December 2021 that they were now a “designated persons” and must take steps to ensure their business is not utilised for money laundering.

The rules bring into scope any art dealer or intermediary which sells artwork for at least €10,000 in one or a series of linked transactions.

For financial institutions which retain art dealers and galleries as clients, the new status of such businesses may impact upon their client risk rating, along with how well each dealer is able to demonstrate their AML efforts.





National Supervisors Forum AGM

On November 7th 2021, the National Supervisors forum held their AGM, which had the theme of “the Fifth Anti-Money Laundering Directive”. Ed Sibley, Deputy Governor of Prudential Regulation in the CBI, spoke at the conference, outlining that credit union boards and management will have to continue to address regulatory and legislative change relevant to the financial services system as a whole.

Mr Sibley outlined that one area “where there is increasing scrutiny relates to AML / CTF, as recognised by the theme of this event”. He proceeded to note how “it is vitally important that Ireland, as a small, open economy with a thriving financial services industry, is pro-active in preventing its financial system from being used for money laundering and terrorist financing purposes. All financial service providers, including credit unions, have an important role in achieving this”.

Central Bank of Ireland issues “Dear CEO Letter”

In December 2021, the Central Bank of Ireland (“CBI”) issued a “Dear CEO Letter”, which outlined its supervisory expectations for Payment and E-Money firms.

In broad terms, the CBI expects regulated firms to be well-governed, with appropriate cultures, effective risk management and control arrangements in place. The CBI notes that firms should have sustainable business models with sufficient financial resources, including under a plausible but severe stress. The Central Bank expects firms to be operationally resilient such that they are able to respond to, recover and learn from operational disruptions. Additionally, and importantly, the financial system must be protected from use for money laundering or terrorist financing activities.

In relation to Financial Crime, the letter confirms that as designated persons under the CJA 2010, Payment and E-Money firms are subject to the obligations of the CJA 2010, and in particular, the obligations set out in Part 4 of the Act (“Provisions Relating to Finance Services Industry, Professional Service Providers and Others”). The letter outlines that “firms must invest in and maintain strong Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) control frameworks to protect the financial system, consumers and the wider public from money laundering and terrorist financing”.

This letter also highlights the importance of the AML/CFT risk assessment process. The AML/CFT risk assessment should “drive the firm’s framework such that it ensures there are robust controls in place to mitigate and manage the risks identified through the risk assessment. A “tick box” or rules-based approach to the risk assessment process is not fit for purpose and does not meet the CBI’s supervisory expectations”.



The CBI noted that all firms falling under the scope of this letter are required to complete a comprehensive assessment of their firm’s compliance with key legislative and regulatory requirements. The CBI expects the Board to oversee this review and to consider the conclusions and any remediation actions emanating from it. All firms are then required to take the following steps:

- Provide the Central Bank with “a Board approved attestation confirming the completion and conclusion of this assessment” by 31 March 2022.
- If any issues are identified during the review, put in place a “Board approved remediation plan”, which ensures timely resolution of the issues.

EUROPEAN & UK FINANCIAL CRIME UPDATES

2

Mairead McGuinness - Statement to the European Parliament

In October 2021, Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, delivered a statement to the European Parliament on the increased efforts of the European Commission to fight money laundering. Ms McGuinness noted the very ambitious AML / CFT package which was adopted by the Commission in July 2021 but also stressed that “effective implementation of the existing AML rules is at the very core of the Commission’s approach to fighting money laundering”.

Ms McGuinness outlined that the enforcement approach to AML is based on several tools available to the Commission:

1. “Thorough control of transposition” - Ms McGuinness noted that infringement procedures have been commenced against all Member States for incomplete or incorrect transposition of AMLD4, while the Commission has sent letters of formal notice to 16 Member States on the grounds of partial or non-transposition of AMLD5.
2. “Effective implementation of the AML Directives” - this involves a proactive look at the state of play of application of the rules as transposed in the national laws of Member States.
3. “Country Specific Recommendations (CSRs) within the European Semester” - the Commission issued 11 AML-related CSRs last year and they plan to make greater use of the Semester for AML in the next cycle.

Ms McGuinness acknowledged the changes that will be brought about by the new legislative package, including a single EU rulebook and a new EU supervisory authority for AML. She concluded her statement by noting that the commitment of the Commission to fight money laundering “*by all possible means remains strong and unchanged*”.

Preventing money laundering in the banking sector - reinforcing the supervisory and regulatory framework

On September 30th 2021, the European Parliament released a paper which provides an overview of current initiatives and actions aimed at reinforcing the anti-money laundering (AML) supervisory and regulatory framework in the EU, in particular from a Banking Union perspective. The paper provided an overview of:

1. the EU framework for fighting money laundering, which includes legislation (most notably the 5th AML Directive) and a number of Commission and Council Action Plans
2. the relevant AML prevention authorities, at both the EU and national level
3. the latest proposed changes to the AML framework, as proposed by the Commission in their AML package published in July 2021.

Further detail on this paper can be accessed here:

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/659654/IPOL_IDA\(2021\)659654_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/659654/IPOL_IDA(2021)659654_EN.pdf)





Extension of Transfer of Funds rules to crypto assets

The European Council has agreed on a mandate to negotiate with the European Parliament on a proposal to update existing rules on information accompanying the transfer of funds. This update aims to extend the scope of the rules to certain crypto assets.

The proposal aims to oblige crypto-asset service providers to collect information about senders and beneficiaries of the transfers of virtual or crypto assets, and to make this information fully accessible to relevant bodies. The purpose of such a regulation is to ensure the traceability of crypto-asset transfers and therefore allow the identification and possible blocking of suspicious transactions. The obligation would apply to all crypto-asset transfers, regardless of the transaction amount.

The Council has recognised the need to urgently ensure traceability of crypto assets and therefore aims to synchronise the application of the proposal on transfer of funds and the market in crypto-assets regulation (MiCA).

EFAMA's Views on the Anti-Money Laundering Package

In November 2021, the European Fund and Asset Management Association ("EFAMA") published their views on the new Anti-Money Laundering package proposed by the Commission in July 2021.

The EFAMA supports this new initiative, believing that it will make strides in ensuring that no loopholes or weak links in the internal market allow criminals to use the EU to launder the proceeds of their illicit activities.

The EFAMA welcomes the proposal for a new AML Authority ("AMLA") as useful in order to tackle the increasingly cross-border nature of financial crime. The EFAMA outlines that the introduction of a dedicated AMLA for the purposes of coordinating supervision at the EU level is welcomed as a means of ensuring enhanced coordination. Compared to the current architecture, in which such functions are entrusted to the European Banking Authority ('EBA') (the EU-level supervisor of national AML supervisors for banks), they believe a dedicated authority for AML at EU level will facilitate coordination between regulators of the various sectors involved, thereby ensuring that all relevant expertise is available to the new authority.

On the harmonised AML regulation, the EFAMA believes that the AML regulation will better ensure a cohesive single rulebook across the internal market and close possible loopholes which may otherwise have benefitted those seeking to profit from ML/TF.

Further detail on the views of the EFAMA can be found here: <https://www.efama.org/newsroom/news/efama-s-views-anti-money-laundering-package>



EDPS Makes Recommendations on European Commission AML Proposals

The European Data Protection Supervisor (“EDPS”), Wojciech Wiewiórowski, has welcomed the European Commission’s legislative plan to overhaul the AML/CTF framework of the European Union via increased harmonisation of rules and the enactment of a direct regulation to replace existing directives.

In issuing its opinion on the European Commission’s plan, the EDPS has also made recommendations to ensure that the plan minimises intrusion into individuals’ privacy and adheres to data protection rules. Mr. Wiewiorowski noted that all measures implemented by the EC must comply with the EU’s data protection laws and principles in relation to the processing of individuals’ personal data. He also emphasised that administrative information and financial information about individuals should be limited to what is necessary in light of specific purposes. In this regard, he invites the legislator to reassess the necessity and proportionality of the proposed access rights.

Finally, the EDPS advised that the categories of personal data that may be processed are set out in the proposed AML legislative package in order to ensure clarity about what personal data must be excluded on the grounds of data protection. Mr. Wiewiorowski noted that he considers the processing of personal data relating to individuals’ sexual orientation or ethnic origin should not be allowed. Furthermore, the proposal should indicate the specific and strict conditions under which the processing of data about individuals’ criminal offences and/or convictions are allowed.



FCA: Analysis of firms' 2017 - 2020 REP-CRIM data

Firms supervised under “SUP 16.23” of the Financial Conduct Authority (“FCA”) Handbook in the UK are required to provide an annual financial crime data return (REP-CRIM), which is used by the FCA to complement their risk-based financial crime supervision. In October 2021, the FCA published an analysis of the REP-CRIM submissions for the 3 reporting periods between 2017-2020. During this period, a total of 5,685 REP-CRIM submissions were received from over 2,300 different firms. This analysis provides interesting insights into financial crime trends and developments, including:

- Retail banking firms in the UK reported approximately 390,000 high risk customers in 2019/2020 which accounts for almost half the high-risk customers reported by all firms (far exceeding firms from other sectors). This is reflective of the sector's business models which have increased exposure and vulnerability to being used for the purposes of money laundering, as reflected in the National Risk Assessment 2020
- The number of SARs reported to the National Crime Agency (NCA) has increased, from 394,048 in 2017/2018 to 480,202 in 2019/2020 (c.22% increase)
- The number of firms reporting automated sanctions screening is increasing year on year, with a 16.5% increase over these 3 reporting periods. However, the investment management sector has the highest number of firms that do not use automatic screening
- A total of 761,437 customers were exited during the 2019/20 reporting period, which has more than doubled in the last 3 years. This was about 0.16% of total customers across all submissions that year. Retail lending and retail banking sectors have exited the most customers for each of those years

Further information on this analysis can be accessed here: <https://www.fca.org.uk/data/financial-crime-analysis-firms-2017-2020>

GLOBAL FINANCIAL CRIME UPDATES

3

More than \$5bn in fines levied on financial institutions globally

In early January 2022, Fenergo released its annual findings on global financial institution enforcement actions. These findings show that the value of penalties imposed on firms has reduced by nearly half (49%) in 2021. Enforcement actions to financial institutions and their employees totalled \$5.4 billion in 2021 for non-compliance with Anti-Money Laundering (AML) and data privacy regulations, in comparison to \$10.6 billion in 2020.

Key findings noted by Fenergo include:

- The total volume of fines levied to financial institutions in 2021 for compliance breaches was approximately 176 compared to 760 in the same period the year prior.
- The average fine value for AML-related compliance breaches issued to financial institutions in 2021 was \$34.4 million.
- EMEA saw the single biggest regional increase in the value of financial penalties from just over \$1 billion (\$1,005,499,683) in 2020 to \$3.4 billion (\$3,448,452,122) in 2021.
- 2021 also saw the rise of non-banking financial firms being targeted by regulators, such as virtual asset service providers.
- Financial institution employees continued to face regulatory scrutiny in 2021 with 16 individuals fined \$16.5 million for their role in AML-related compliance breaches.

Fenergo attributed the decrease in fines to a number of factors, including a reduction in the number of multi-billion dollar fines compared to previous years and also the impact that the pandemic has had on regulatory investigations.

FATF INSIGHTS

4

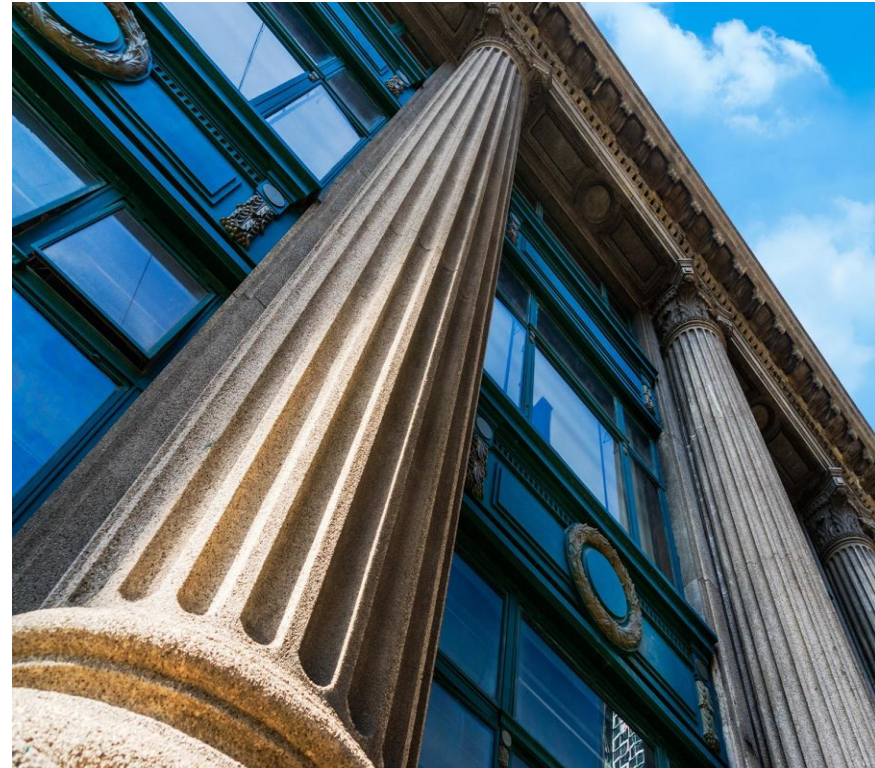
Outcomes FATF Plenary, 19-21 October 2021

The fifth Plenary of the FATF under the German Presidency of Dr. Marcus Pleyer took place on 19-21 October. During this Plenary, delegates finalised work in a number of important areas, including:

- finalising updated guidance for a risk-based approach to virtual assets and virtual asset service providers;
- providing a final report on survey results on implementation of the FATF Standards on cross-border payments; and
- finalising a report for government officials that focuses on the digital transformation of AML/CFT for operational agencies.

The FATF also agreed to release for consultation the proposed revisions to its Recommendation 24 on beneficial ownership of legal persons to ensure greater transparency about the beneficial ownership of legal persons, and take action to mitigate the risks.

Separately, in October 2021, the FATF issued a call for action in relation to High Risk Jurisdictions. The FATF noted that “High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the “black list”.



Publication of the joint EG-FATF Digital Transformation Report

In October 2021, the Egmont Group (a united body of 167 Financial Intelligence Units), alongside FATF, published its joint EG-FATF Digital Transformation of AML/CFT for Operational Agencies: Detection of Suspicious Activities and Analysis of Financial Intelligence Phase 1 report.

This report, for government authorities, focused on “how” and “when” to find the right digital tools, and introduce and optimise them for AML/CFT purposes. The report also addresses how to overcome the practical and operational challenges arising throughout different stages and processes in the daily operations of operational agencies.

The report outlines that *“digitisation and digital transformation has the potential to bring immense opportunities to FIU workflows and there are practical needs for FIUs to harness technology to solve some of their day-to-day challenges. Formulating key strategic considerations prior to the introduction of digital initiatives is instrumental in jump starting any programme”*.

Further information on the findings of this report can be found here: https://egmontgroup.org/sites/default/files/filedepot/Communication_Officer/Digital/Digital-Transformation-executive-summary.pdf



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