

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 21-3071

24 January 2022

### SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

#### EEA EFTA Comment

**concerning the Commission's legislative package on Anti-Money Laundering and Countering the Financing of Terrorism – Commission proposals COM(2021) 420, COM(2021) 421, COM(2021) 422, and COM(2021) 423 ([AML/CFT package](#))**

#### 1. EXECUTIVE SUMMARY

*The EEA EFTA States:*

- *Support the Commission's plans to foster supervisory convergence and coordination of efforts by National Competent Authorities (NCAs) to combat money laundering and the financing of terrorism;*
- *Believe the existing governance structure of the European Supervisory Authorities, which allows for full EEA EFTA participation without the right to vote, should be maintained in the Anti-Money Laundering Authority (AMLA). Therefore, they recommend removing the relevant provisions of COM(2021) 421 concerning AMLA's "Executive Board" from the proposal;*
- *Consider that discussions on the funding methodology for the AMLA would benefit from early participation of the EEA EFTA States;*
- *Emphasise that direct supervision at a European level should be limited to instances where national supervision is obviously inferior due to the nature of the supervised entities.*

#### 2. INTRODUCTION

1. The EEA Agreement allows the EEA EFTA States to participate fully in the Internal Market for Financial Services. Continued incorporation of relevant EU legislation into the Agreement ensures legal homogeneity throughout the EEA.

2. The EEA EFTA States welcome the Commission’s proposed legislative package on Anti-money laundering and countering the finance of terrorism (AML/CFT Package)<sup>1</sup>.
3. In particular, they support strengthening the existing framework to counter money laundering and the financing of terrorism, including by adding transfers of crypto assets to the scope of the package.
4. The EEA EFTA States would however like to address certain concerns, related to the proposed Regulation establishing a new Anti-Money Laundering Authority (AMLA), (COM(2021) 421).

### **3. CURRENT EEA EFTA PARTICIPATION IN THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION**

5. The EEA EFTA States recall that the EU and EEA EFTA Ministers of Finance and Economy approved principles for the incorporation of the three regulations that established the three European Financial Supervisory Authorities (ESAs) on 14 October 2014. The regulations were incorporated into the EEA Agreement in 2016 after complex negotiations, allowing for the inclusion of the European System of Financial Supervision in the EEA Agreement.
6. The adaptations were based on the two-pillar structure of the EEA Agreement and the legal framework of the EU and of the EEA EFTA States. This enabled the EEA EFTA States’ representatives to participate fully as members without voting rights in the Board of Supervisors in the three ESAs. The ESAs perform actions of a non-binding nature throughout the EEA. Binding decisions towards EEA EFTA competent authorities and market operators are taken by the EFTA Surveillance Authority, based on a draft from the relevant ESA. The EFTA Court has the competence to review decisions taken by the EFTA Surveillance Authority.

### **4. FUTURE EEA EFTA PARTICIPATION IN THE ANTI-MONEY LAUNDERING AUTHORITY (AMLA)**

7. The EEA EFTA States wish to highlight the importance of maintaining the balanced solution found regarding the participation of the EEA EFTA States in the governing of the ESAs in the governance structure of the AMLA. This would allow for smooth functioning of the internal market for Financial Services under the EEA Agreement, to the mutual benefit of the EU and the EEA EFTA States. Hence, the EEA EFTA States have a great interest in participating fully as members without voting rights in AMLA.
8. Regarding the Commission proposal to place important decision-making powers within an “Executive Board” of AMLA, composed of independent full-time members, it is unclear how the balance found regarding the EEA EFTA State participation in the ESAs can be maintained in the AMLA. Accordingly, the EEA EFTA States recommend that the same approach taken with the ESAs is taken with the AMLA, i.e. that the provisions

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<sup>1</sup> The package consists of Commission Proposals COM(2021) 420, COM(2021) 421, COM(2021) 422, and COM(2021) 423

regarding the “Executive Board”, as established by Arts. 45 and 53 of COM(2021) 421, be removed from the proposal and its tasks moved to the General Board.

9. A harmonised European approach to supervision is welcomed by the EEA EFTA States, but should nonetheless allow for supervision to benefit from the local expertise of the national supervisory authorities. Regarding the new direct supervisory tasks in Article 13 of the proposed AMLA Regulation, the EEA EFTA States would like to emphasise that direct supervision at a European level should be limited to instances where national supervision is obviously inferior due to the nature of the supervised entities. Extension of direct supervision needs to be proportionate and respect the principles of subsidiarity. The practical alignment of national approaches is in most cases sufficiently secured by issuing guidelines and opinions at a European level while safeguarding the positive effects of proximity of NCAs to the local market.

## **5. FUNDING OF AMLA**

10. According to the Commission proposal, the methodology for funding of the AMLA will be decided in a delegated act. The EEA EFTA States believe discussions on this methodology would be facilitated by their early participation in the relevant expert group. The EEA EFTA States’ financial contribution will be decided by the Joint Committee Decision incorporating the AMLA Regulation into the EEA Agreement.

## **6. FUTURE INCLUSION INTO THE EEA AGREEMENT OF THE ADOPTED ACTS**

11. Like previous AML Directives, some Articles in the AML/CFT package refer to acts adopted pursuant to Title V of the TFEU which falls outside the scope of the EEA Agreement. The EEA EFTA States will therefore suggest a joint recognition of that when the package is incorporated into the EEA Agreement.