A response to the Basel Committee on Banking Supervision Consultative Document on the Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision (November 2019)

For and on behalf of Mazars – 5 February 2020

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in 91 countries and territories around the world, we draw on the expertise of 40,400 professionals – 24,400 in the Mazars integrated partnership and 16,000 via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

We are pleased to respond to the Basel Committee on Banking Supervision's Consultative Document on the Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision.

1. General comments

The supervision of compliance with anti-money laundering legislation, based on host country supervision, with limited harmonisation of supervisory competences or practices has resulted in challenges in supervising cross-border groups.

Mazars therefore welcomes and is supportive of the Committee's objective of enhancing the effectiveness of supervision on banks' money laundering (ML) and financing of terrorism (FT) risk management. We believe that the proposed guidelines recommending the establishment of an effective cooperation system and setting out how prudential and AML/CFT supervisory functions could exchange information will go some way towards achieving this important objective. Enhanced supervisory cooperation will ultimately benefit our banking clients, many of which operate on a cross-border basis.

We are particularly supportive of the Committee's proposal that such information exchange and cooperation systems should be effective and efficient and therefore framed by considerations such as avoiding duplication of effort, maintaining supervisors' independence, be limited in scope to information already held and follow a risk-based approach. Such safeguards, and safeguards related to confidentiality of information and data protection will be important to banks and supervisory authorities alike in view of the need to follow the rule of law and protect fundamental rights. This will be crucial where information may relate to on-going enforcement investigations.

The European Central Bank (ECB) recently highlighted the need to put in place robust formal procedures for the exchange of information in secure ways and to clearly set out the justification for such exchange based on a well-defined relevance criteria. The ECB saw this as a key learning point from its experience of exchanging information with AML/CFT supervisors of credit and financial institutions within the European Economic Area following the requirement set out in Article 57a(2) of the Anti-Money Laundering Directive[1].

Exchanging information that is relevant in a timely manner may yet remain a challenge in the medium term as supervisors themselves learn to embed the relevant processes, and importantly continue to build on the goodwill and trust necessary for effective cooperation. The difficulty in reaching a common understanding of what constitutes relevant information between supervisors within the EEA (where the AML/CFT framework has been harmonised to a significant extent) is likely to be compounded where information is

[1] Speech by Yves Mersch, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB at the Colloque de l'AEDBF- Europe, Paris 15 November 2019.

*Where permitted under applicable country laws exchanged between jurisdictions outside of the EEA, where supervisory practice may diverge even more significantly.

In addition, some jurisdictions may also need, in order to fully meet the aims of the guidelines, to first enhance their own domestic cooperation mechanisms and the institutional set up to allow for some of the good practices envisaged in the guidelines.

We note in that respect the recognition in the guidelines that a range of supervisory practices deemed helpful by the guidelines may not all be applicable to all jurisdictions. Nevertheless, we acknowledge that the guidelines, in setting examples of such practices will play a key role in facilitating reflections on areas where the supervisory practice in some jurisdictions could be considered or adopted by others. The Basel Committee guidelines are likely to be most beneficial in jurisdictions outside of Europe, where supervisory practice is less harmonised, by providing a starting point for cooperation and exchange of information.

2. Existing good practice and recent enhancements in collaboration

In view of the above, we think that it will be important, when implementing some of the guidelines' recommendations, for supervisors to consider and incorporate, where possible, existing good practice by other supervisors.

We note that in some jurisdictions, for example France, AML/CFT and prudential supervision is already centralised and performed by the same authority (ACPR). The banking licence application is assessed by the ACPR considering both the bank's prudential and AML/CFT framework to evaluate the soundness of the business model of the bank. Banking reports regarding prudential ratios and AML/CFT (i.e. the AML/CFT questionnaire) are submitted to the same unit within the ACPR and inspection assignments performed by the ACPR are focused on both ML/FT risks and prudential requirements.

Another example of good practice outside of the EEA is reported in the *Mutual Evaluation Report of Hong-Kong, China on anti-money laundering and counter-terrorist financing measures*[2]. This notes that *"authorities respond effectively to the large number of requests for cooperation from foreign counterparts"*. On the other hand, the report notes that "*given the jurisdiction's position as an international financial centre and the risks it faces from crimes committed abroad, it is not making sufficient outgoing requests for cooperation and authorities should focus more on prosecuting the laundering of proceeds from foreign offences"*. The practices highlighted in the guidelines should enable Hong-Kong and other jurisdictions expected to collaborate more closely with foreign regulators on foreign offences to identify more readily the opportunities and processes to do so.

Recent developments in the European supervisory framework will also give effect to some of the aims pursued by the Basel Committee guidelines. The guidelines published by the joint Committee of the European Supervisory Authorities (ESAs) in December 2019 establishing colleges of anti-money laundering/counter terrorist financing supervisors for the first time in the EU will provide a platform for sharing information between AML/CFT and prudential supervisors[3]. These colleges will bring together AML/CFT supervisors of the same firm, as well prudential supervisors and AML/CFT supervisors from third countries. The supervisory colleges, underpinned by the Basel Committee guidelines, will therefore

[2] Financial Action Task Force and Asia-Pacific Group on Money Laundering Mutual Evaluation Report of Hong-Kong, China September 2019.

[3] Final Report on the Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions- The AML/CFT Colleges Guidelines.

also provide useful fora to embed the envisaged collaborative approach more broadly than at the European level.

The new powers provided to the European Banking Authority (EBA) as a result of the change to the ESA regulation should also improve cooperation and coordination between AML/CFT and prudential supervisors in colleges and with third countries, with the EBA committed to building an effective EU database of AML/CFT information to coordinate better information sharing. The EBA is also proposing to further enhance the SREP guidelines to better capture AML/CFT risks and develop a common assessment methodology for granting credit institutions authorisation. For these new powers to be successfully embedded, it will be important for the EBA to be provided with the necessary resources, but we see this as a positive step towards a more integrated and coherent framework in Europe.

3. Remaining challenges

Although the Basel Committee guidelines and some of the developments highlighted above will go some way towards tackling ML and FT risks in the financial system, the possibility of further enhancements will continue to be discussed at the European and International levels for some time.

In Europe, the question remains as to whether divergence in national practices exposes the internal market to such significant ML/FT risks that a move from a Directive to a Regulation for AMLD, is desirable in order to ensure maximum harmonisation. Other measures could include empowering the EBA to issue legally binding standards to ensure cooperation, joint risk work and associated decisions in AML colleges. The EBA is however clear that it does not wish to be a supervisor of supervisors and cannot on its own deliver some of the fundamental changes to the system that are required[4].

Some supervisors, for example in France see the ability of the EBA to carry out joint emergency action or temporarily replace a national supervisor in the countries or sectors most exposed to ML/FT risks as a more effective and faster solution than the creation of a new single European agency in charge of AML/CFT and see the value in a pragmatic approach that builds on existing achievements.[5]

This illustrates that building consensus on future measures and embedding them not only at the national, European and Global level is likely to remain a challenge in the medium term, as individual jurisdictions continue to adopt risk-based approaches tailored to their own analysis of risk and to their existing supervisory set up and practice. How supervisors work together on implementing some of the recommendations set out in this consultative document and their willingness to collaborate in the next few years will remain the decisive factors in assessing how effective these guidelines will have been.

[4] Introductory statement by Jose Manuel Campa, Chairperson of the European Banking Authority to the Committee of Economic and Monetary Affairs (ECON) of the European Parliament, 5 September 2019.
[5] Speech by Francois Villeroy de Galhau, Governor of the Banque de France and Chairman of the ACPR at the Palais Brongniart, 21 June 2019.