ESTA
The Cash Management Companies Association

Submission to the EU public consultation on AML/CFT – Communication from the Commission C(2020) 2800 final of 7 May 2020.

Additional comments to ESTA's responses to the Consultation ending 26 August 2020 on an action plan for a comprehensive Union Policy on preventing money laundering and terrorist financing.

29 July 2020

ESTA is very pleased to respond to the public consultation on AML/CFT further to the adoption of the commission communication of 7th may 2020.

ESTA key messages in a nutshell

For the reasons developed in this submission, ESTA urges the Commission to look at any possible new restrictions on cash very carefully and to assess their effectiveness and proportionality thoroughly since cash, when considered objectively is not, and should not be, a priority for AML/CFT policies.

ESTA appreciates that there has been a long standing prejudice against cash, but calls for a renewed look in the context of the severe restrictions that physical money offers to criminals and terrorists in an increasingly dematerialised economy and rapidly developing financial engineering.

Further to the publication of the July 2019 Package on the second risk assessment, ESTA wrote to the Commission to raise four major points to be considered when preparing a Union policy on AML/CFT.

ESTA reacted to the following statement made in the supranational risks assessment :

> *"while cash is falling out of favour among consumers, it remains criminals' money laundering instrument of choice as they can use cash to transfer funds rapidly from one location to another, including in air transit. Use of cash is the main trigger for the filing of suspicious transaction reports"*

The risk assessment made substantial statements against cash in the context of money laundering and terrorist funding, following the 2016 Action plan against the funding of terrorism, according to which "*payments in cash are widely used in the financing of terrorist activities",* a statement which lacked any serious substantiation.

As a matter of fact, the Commission report to the European Parliament and the Council on restrictions on payment in cash COM(2018) 483 final that followed the 2016 Council action plan's recommendation to look at cash payment limitations stated that:

> *"The detailed analysis of a selection of recent terrorist attacks presented in the study also highlighted that restrictions on payments in cash would have had little impact on the capacity to prepare these attacks."*

This is due essentially to the fact that a substantial part of expenditures (cash or non-cash) in preparation of terrorist actions are legal in nature, but become illegal by a change of purpose (e.g. renting a lorry is legal, but running it into a crowd is not): restrictions on cash payment are ineffective in their prevention. The second reason is that, in relation to the sharply decreasing cost of recent terrorist attacks, the level of sums paid in their preparation (cash or non-cash) are of low amounts and unlikely to be caught by cash payments limitation unless those limitations are set extremely low.

ESTA added in its response to the Commission consultation that the "anonymity" factor of cash is not critical in the use or cash, since a dead terrorist after his/her suicidal attack does not care much about traceability.

It is also questionable that anyone who intends to massively kill innocent people would care very much in breaking the law by paying in cash over any legal limits, .particularly when it concerns paying for illegal purchases such as explosives or weapons, the trading of which is already subject to controls and/or prohibitions in the EU. The prohibition of sales or war grade weapons has done very little in preventing terrorists from acquiring them: why would terrorists abide any more to the law with regards to the way they pay for them ?

In our response to the Commission further to the July 2019 package, ESTA raised raise four points in relation to the statements in the report:.

1. **<u>Cash is not "falling out of favour with consumers"</u>**

The reasons for the declining use of cash, for example in Sweden where it is at its lowest, are multiple and complex,[1] however still 72% of the population want to keep it.[2] The key factor is not any consumer's choice against cash, but that it is less readily available due to the restriction in distribution of change money by the banking sector, which proves to be a very powerful anti-cash instrument (as no one will pay with cash when no change money can be given if the exact amount cannot be paid).

However, from a global perspective, phase out of cash is not the rule: cash in circulation is growing at a rate of ca. 3% per year, and 80% of all payments worldwide continue to be cash transactions. Cash is, by default, an essential part of every stable financial and economic system[3]. It needs to be protected, not stigmatised.

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[1] Cf for example "Riksbank: "*Banknote and coin changeover in Sweden: Summary and evaluation*", March 2018": in this report, the National central bank of Sweden explains how the massive banknote swap and short period of validity and redemption of old notes have discouraged Swedes from having cash due to the loss suffered with notes having become invalid and not exchangeable anymore.

[2] SIFO 2019, this is an increase from 68% in 2018. Similarly, proponents for cashless went down from 25 to 21%.

[3] Virtually irreplaceable: Cash as a public Infrastructure; IMTFI at the University of California, Irvine

It is remarkable that during the Covid-19 crisis experienced this year, precautionary cash withdrawals have increased as the pandemic progressed. Consumers have paid less in cash, essentially because of confinement in many countries,[4] but are holding more cash.

2. <u>Cash is not the criminals' favourite instruments and is easy to spot</u>

There is little to no evidence to support the claim that eliminating high-denomination banknotes or restricting cash payments will prevent crime.[5] Targeting cash simply misidentifies the issue at hand.

Unfortunately for law enforcement authorities, cash is not the "*criminals' instrument of choice"* for their illegal activities as large amounts of cash are conspicuous. The risk assessment actually confirms it when it says that "*Use of cash is the main trigger for the filing of suspicious transaction reports*." Without cash, much less suspicious transaction reports would be filed, without meaning that there would be less suspicious transactions deserving attention.

The first impact of the reduction/elimination of cash on criminal transactions would be that LEAs would see much less of them.

Criminals probably wish that cash could be used to "*transfer funds rapidly from one location to another*" as is stated in the Commission supranational risk assessment, but this is unfortunately for them not the case: illegal transport of physical cash is slow and risky as crossing borders with large amounts of illegitimate cash is inherently risky. Rather, criminals are more likely to convert any funds (cash or non-cash) into crypto currencies, transfer it with a few clicks to any other location on the globe and convert it immediately into any currency (cash or non-cash): no risk, no traceability, no costs, no delay. Crypto-currencies – this is their *raison d'être* - are completely outside the control of monetary authorities. Who needs cash for large transfer of funds when such a convenient alternative process is available?

According to Europol only 1.5 billion euros in cash were seized in the entire Europol jurisdiction in 2015.[6] This is nothing compared to the claimed illicit behaviours uncovered by the infamous 'Panama' and other 'Paradise' papers, where hundreds of billions of euros have been illicitly processed, with no report that cash has been used in those processes.

This is also substantiated by the Belgian Financial Intelligence Unit headed by Mr Philippe de Koster, also Avocat général at the Belgian Supreme Court (cour de cassation): in a presentation he delivered at the 2019 ESTA conference, Mr de Koster clearly explained that the use of cash is a weakness for many criminal activities. His points were the following:

- "CASH is an easy indicator of suspicious financial money laundering activities
- CASH is easier to intercept by customs when moved cross-border
- Uses of alternative payment systems (HAWALA, PSPs, Virtual currencies) create new vulnerabilities and challenges for FIUs and LEAs

[4] As a consequence of confinement, card payments have also dropped significantly, except for the part related to e-commerce
[5] Keeping cash – Assessing the arguments about cash and Crime; IMTFI at the University of California, Irvine
[6] Europol: "Why cash is still king? A strategic Report on the use of cash by Criminal groups as a facilitator for money laundering"; 2015

- Remote access and multiple small wire (instant) transfers require adequate IT monitoring tools"[7] which, he explained, do not exist today

In his presentation, Mr. de Koster also identified the use of goods (e.g. used cars) to transfer value from one country to another, a system which is much safer than the cross border transport of cash. These goods can be purchased with and sold for cash or non-cash payment instruments.

Rather than turning to cash, criminals also use e-payments facilities for their activities as highlighted by a recent report from INTERPOL on the growing use of mobile payments by criminals in Africa: *"The evidence shows that criminals are already exploiting mobile money services in Africa. The anonymity that these services too often allow and the technical nature of the industry also present a challenge to law enforcement in investigating and prosecuting these crimes".*[8]

The report presents an overview of the criminal exploitation of mobile money services, including fraud, money laundering, extortion, human trafficking and people smuggling, the illegal wildlife trade and terrorism. Since mobile payments can be used, and is used up to 92%, for peer-to-peer transactions, INTERPOL considers that "*this form of transaction represents the most significant vulnerability for exploitation in the form of fraud*". This is of particular concern as the penetration of mobile phone in Africa is rapidly expending, expected to double by 2025, and this form of payment offers anonymity, in a context where cross-border P2P mobile money remittance represents the fastest growing sector of mobile payments in Africa.

So cash is definitely not the criminals' instrument of choice for collecting illicit revenue and transferring it cross border.

3. Further restrictions on cash would not help the fight against illicit activities

Also of concern in the Commission report is the suggestion to consider policy tools such as cash payment limitations and additional restrictions on the use of cash. It also suggests looking at "high denomination notes", and with the 500 euro note now phased out, the 200 euro note is the next one to be looked at.

There is no justification for such policies. The Commission should look into more details to the use of the US$ (highest denomination $100) and the Swiss franc (highest denomination CHF 1000, i.e. around US$ 975) by criminal organisations to appreciate that big denominations have no incidence on the cash used for illegal activities. Also of note is that the use of the US$ in criminal transactions has increased despite the decision by the US to remove any denomination above $100 in 1969, when the real value of a $100 note today is only around 15% of the real value of a 100 dollar note in 1969. The Commission might also

[7] Philippe de Koster, head of CTFI-CFI, "*Cashless: help or hindrance to anti-money laundering policies and Financial Intelligence Units?*", presentation at ESTA's 35th annual conference in Vienna, 20 May 2019 – available on request at contact@esta.biz.

[8] "*Mobile money and organized crime in Africa";* Report: Interpol; 6 July 2020 ; https://www.interpol.int/News-and-Events/News/2020/Report-Criminals-infiltrating-Africa-s-booming-mobile-money-industry

take into consideration how conspicuous payments in large denomination notes can be, and the difficulty that their breaking up in smaller denominations do represent.[9]

The 2020 Communication raises again the possibility of harmonisation of cash payment limits in Europe as a possible measure to consider, and refers to the Commission Communication Com(2018) 483 final in its footnote 19.

ESTA is very pleased, though, that cash is only marginally mentioned in the May 2020 Communication, which represents a substantial improvement compared to previous AML policy documents. This is rightly so since AML/CFT, as ESTA has developed in its response to the March 2020 public consultation, is <u>*not*</u> a cash matter. Cash is an issue for most money launderers, and money laundering in most cases consists, as recalled above, in getting rid of cash and substitutes it with other types of money that creates the appearance of a legitimate trace. This is precisely the conversion process of cash into other forms of money that constitutes the main risk for criminals and the best opportunities for LEAs.

As a recent study of the Bundesbank states it, "*simplistic conclusions and sensationalised estimates of the extent of cash use in the shadow economy*" are often drawn.[10] The same applies to money laundering and cash, as money laundering is in essence a process of legalisation of illicit profits from the shadow economy.

In our responses to the March 2020 public consultation, ESTA drew the attention of the Commission on a number of important factors, which tend to be overlooked when considering AML policies:

- Illicit proceeds may not always need to be laundered if they are used/re-invested within the illegal economic circuits that generated them. Any AML policy will therefore unlikely be effective in targeting illicit monies, whether in cash or not, not in need to be laundered;
- Another recurrent mistake is to consider, as does the Commission Supranational risk assessment of 2019, that cash is "*the money laundering instrument of choice of criminals*": as said above, laundering will in most cases mean getting rid of cash. Most report to FIUs are fuelled on the basis of suspicious cash transactions, and therefore the process of getting rid of cash is a risky process for criminals, and one which is most prone to reporting to the authorities;
- Another common mistake is to consider that cash can be moved easily from one point of the globe to another. Moving cash illegally, particularly in large amount, is very risky, costly, slow and inefficient, compared to the facilities created by crypto currencies to transfer funds, cash or non-cash, internationally in a few clicks, at no costs and with no risks, including the possibility of exchanging it in any currency, in cash or non-cash, and finally leaving no trace !

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[9] Since banks in a number of EU Member States have stopped providing cash services over the counter (cf. European Payment Council "new SECA framework", 2016), the only possibility to break a large denomination note is to deposit it on an account and withdraw cash in smaller denominations from an ATM, which defeats the very purpose of using cash for anonymity.

[10] Deutsche Bundesbank: "Cash use in Germany - Macroeconomic estimates of the extent of illicit cash use in Germany", Nikolaus Bartzsch and Matthias Uhl (Deutsche Bundesbank), Friedrich Schneider (Johannes Kepler University Linz), 2019

4. Keep KYC processes within the means of economic operators

In our submission of March 2020, ESTA also raised two major issues which the Union policy against money laundering should take into consideration:

The first is that there is a limit to what can be imposed to any economic operator, whether an obliged entity or not, in relation to customer due diligence. Any economic operators has, compared to LEAs, very limited enquiry and verifications tools to assess who their customer (really) is. Any obligation regarding KYC needs to take into consideration what is concretely feasible for economic operators. The risk is that genuinely legal and law-abiding businesses are deprived from being able to trade only because of a sort of precautionary principle whereby it is preferred to turn down business than take the slightest risk of very heavy fines if the information provided by a new customer is not accurate. This is particularly the case for any business dealing with cash, since cash has been unfairly stigmatised in recent years.

Finally, a crucially missing tool for anti-money laundering authorities is the ability to monitor a succession of small related electronic payments made to split a large payment likely to be spotted by FIUs or reported by banks or other obliged entities.

ESTA hope that these comments will be of help to the Commission and will be considered in the approach to the Union policy against money laundering. ESTA is available to develop them further as required.