PUBLIC HEARING

SPECIAL COMMITTEE ON FINANCIAL CRIMES, TAX EVASION AND TAX AVOIDANCE (TAX3)

European Parliament

Wednesday 21.11.2018

PAUL-HENRI SPAAK BUILDING – ROOM **5B001**

The hearing will be webstreamed on: **http://www.europarl.europa.eu/ep-live**

COMBATTING MONEY LAUNDERING IN THE EU BANKING SECTOR

Chaired by **Petr JEŽEK**

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PUBLIC HEARING
"COMBATTING MONEY LAUNDERING IN THE EU BANKING SECTOR"

WEDNESDAY, 21 NOVEMBER 2018
9.15 - 13.00
Room: **PAUL HENRI SPAAK (PHS) 5B001**

BRUSSELS

DRAFT PROGRAMME

9.15 - 9.20 **Welcome by the TAX3 Chair**

9.20 - 10.35 **Danske Bank and money laundering allegations**

- *Mr **Howard Wilkinson**, whistle-blower on Danske Bank*
- Mr ***Stephen M. Kohn***, *counsel to Mr Wilkinson and expert in whistleblowing*

Discussion with TAX3 Members

10.35 - 11.55 **Money laundering in the EU Banking Sector: what is failing?**

- *Mr **Diederik van Wassenaer,** Global Head of Regulatory and International Affairs of ING Bank NV, ING Groep*
- *Mr **Jesper Nielsen** , Interim CEO, Danske Bank*
- *Ms **Åsa Arffman**, Chief Legal Counsel, Swedish Bankers' Association*

Discussion with TAX3 Members

11.55- 12.55 Better cooperation for better results in the fight against money laundering: Enhancing the role of the EBA in AML supervision of the financial sector

- *Mr **Adam Farkas,** Executive Director, European Banking Authority (EBA)*
- *Mr **Martin Merlin**, Deputy Director General, DG FISMA, European Commission*
- *Ms **Alexandra Jour-Schroeder**, Acting Deputy Director General, DG JUST, European Commission*

Discussion with TAX3 Members

12.55- 13.00 Conclusions by the TAX3 Chair

TAX3

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CVS OF THE SPEAKERS

Stephen Martin Kohn
Partner at Kohn, Kohn & Colapinto

Stephen Martin Kohn is an attorney for Kohn, Kohn & Colapinto, a Washington, D.C., law firm specializing in employment law. The author of the first legal treatise on whistleblowing, Kohn is recognized as one of the top experts in whistleblower protection law. He also has written extensively on the subject of political prisoners and the history of the abrogation of the rights of political protestors. His interest in First Amendment issues as related to political protest likely spurred his interest in whistleblowers, as whistleblowing cases typically are adjudicated on the basis of the First Amendment.

Kohn is a graduate of Boston University (B.S. in Social Education. 1979) and Brown University (M.A. in political science, '81); he received his law degree from Northeastern University in 1984. While at Boston University, Kohn was one of the founders of the *B.U. Exposure*, a student-run independent newspaper dedicated to exposing the ethical irregularities of the administration of B.U. President John Silber. (In an interview with Mike Wallace first broadcast on 60 Minutes in January 1980, Silber denounced the *B.U. Exposure* staff as "short-pants communists".[1]

After graduating from Northeastern Law, Kohn served as an Adjunct Professor and Clinical Supervisor at the Antioch School of Law, where he oversaw a legal clinic on whistleblower protections from 1984-88. He also served as the Clinical Director and Director of Corporate Litigation for the Government Accountability Project.

Stephen Kohn founded the law firm now known as Kohn, Kohn & Colapinto with his brother Michael, in 1988. The original focus of the Kohn brothers and their later partner David K. Colapinto, was on nuclear power, specifically, protecting nuclear industry employees who blew the whistle on their employers in regards to safety issues.

In addition to defending whistleblowers, Kohn, Kohn & Colapinto has filed numerous qui tam suits linked to the disclosure of government fraud. Kohn personally has represented whistleblowers in the O. J. Simpson murder case, the World Trade Center bombing cases, the Oklahoma City bombing case, the Linda Tripp-Privacy Act case, and the Bradley Birkenfeld-UBS AG tax evasion case. One of the firm's clients was Dr. Frederic Whitehurst, a supervisor at the FBI Crime Lab, who blew the whistle on the Bureau and its tainting of forensic evidence for use by prosecutors. Kohn introduced Whitehurst's 1995 testimony before the House Subcommittee on Crime.

In 2006, Kohn was the Daynard Public Interest Visiting Fellow at his law alma mater, Northeastern Law. He is the Executive Director of the National Whistleblower Center and Attorney-Trustee for the National Whistleblower Legal Defense and Education Fund.

Diederik van Wassenaer (1957)

is Global Head of Regulatory and International Affairs of ING Group. In addition he is a member of the Management Board of ING Bank Netherlands, member of the executive board of VNO-NCW, Board member of various Institutions, e.g. the Carnegie Foundation and Member Advisory Council of the Women in Financial Services network. Since joining ING in 1999 as Group General Counsel, Van Wassenaer held a variety of senior management positions in ING's Wholesale Banking Division. Van Wassenaer holds a degree in civil law from the University of Leiden. Before joining ING, Van Wassenaer spent 2 years as an officer in the Royal Dutch Marine Corps and 15 years as a lawyer with leading Benelux law firm Nauta Dutilh, including five years as a resident partner in New York and London.

Jesper Nielsen
Interim CEO at DANSKE BANK

Mr. Jesper Nielsen is interim CEO at Danske Bank A/S since October 1, 2018. Mr. Jesper has been Head of Banking DK & Member of Executive Board at Danske Bank A/S since May 2, 2018 and since October 1, 2016 Respectively. Mr. Nielsen served as Executive Vice President and Head of Business Development for Personal Banking at Danske Bank A/S from 2012 to October 1, 2016.

Mr. Nielsen served as Deputy Chief Executive Officer and Head of Business Development at Danske Bank A/S, Irish Branch. Mr. Nielsen was Deputy Chief Executive Officer and Head of Business Development at National Irish Bank Limited from April 2010 2012.

Mr. Nielsen was also responsible for managing all aspects of business development including channel development, product development and strategic marketing.

From 2007 to 2010, he was Senior Vice President Danske Bank, Group Business Development, Strategy & Planning.

From 2004 to 2007, he was First Vice President Danske Bank, Group Finance, Strategic Analysis.

From 2003 to 2004, he was First Vice President Danske Bank Denmark, Strategy & Analysis. From 2002 to 2003, he was First Vice President Danske Bank Denmark, Sales & Marketing. From 2000 to 2002, he was First Vice President Danske Bank Denmark, Product Development.

In February 2011, he also took over responsibility for the Corporate Banking division at National Irish Bank. Mr. Nielsen was part of the team that led the implementation of the restructuring programme which National Irish Bank completed. He has worked with Danske for 15 years, holding a number senior management positions in the Danske Bank Group including, Retail Banking, Finance and Product Development. He served as Head of Strategy and Analysis in Danske Bank Group ’s Business Development division. He has been Chairman of Realkredit Danmark A/S since April 26, 2018. He served as Vice Chairman of Realkredit Danmark A/S from March 6, 2017 to April 26, 2018. He holds a Masters of Science in Economics in 1996. He is Chairman at e-nettet, MobilePay A/S and MobilePay Denmark A/S.

Åsa Arffman

Born January 27, 1963
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EMPLOYMENT HISTORY

Swedish Bankers´ Association
Chief Legal Counsel and Head of the Legal Department 2017-06-01 –

Senior Legal Adviser 2008-12-17 – 2017-05-31
- Responsible for issues related to compliance, AML, deposit insurance scheme, resolution and recovery and company law
- Member of European Banking Federation´s Legal Committee och AML Committee
- Arranged two major Anti Money Laundering conferences

Finansinspektionen (Swedish FSA)
Head of the Banking Legal unit 2004-02-01 – 2008-12-16

Temporary Head of the Legal Department 2007-05-01 – 2007-10-01,
- Responsible for Banking-, securities-, insurance- and fund issues and the Administrative unit 2008-08-11 – 2008-09-05

Lawyer Officer 2000-11-01 – 2004-02-01
- Dealing with authorizations- and application cases and sanctions cases

Swedish Inspectorate of Auditors
Director 1996-01-08 – 2000-10-31
- Dealing with applications and sanctions

Swedish Courts
Administrative Court of Appeal - Sundsvall 1993-06-01 – 1996-01-07
- Fiscal and assessor

Administrative Court – Luleå 1991-05-01 – 1993-05-31
- Court clerk

EDUCATION

Taxation (10 Points/10 Weekes) 1999
Calibration and Accounting (10 points/10 weeks) 1996
Master of Laws, University of Uppsala 1986 – 1991

OTHER ASSIGNMENTS

Attend, among others, the following Government Committees etc.
- Fraud Invoice, (SOU 2015:77) 2014-04-10 – September 2015
- AML - criminalization, confiscation and ban on dispositions (SOU 2012:12) 2010-10-18 – mars 2012
- Better and faster deposit guarantee (SOU 2009:41) 2007-05-22 – 2008-12-14
- The National Board for Consumer Dispute 2014 –
- Swedish Enforcement Authority´s advisory council 2009-2011

Ádám Farkas

Executive Director of the European Banking Authority

Adam Farkas is the Executive Director of the European Banking Authority (EBA). He was appointed in March 2011 and is serving a term of five years. He is in charge of the management of the Authority and prepares the work of the Management Board. In this respect, he is responsible for implementing the EBA's annual work programme under the guidance of the Board of Supervisors and under the control of the Management Board.

Prior to this appointment, Adam Farkas served as Chairman of the Hungarian Financial Supervisory Authority. He started his career as an Assistant Professor at the Budapest University of Economic Sciences. He has also been a consultant to various financial institutions in Budapest and London, including the European Bank for Reconstruction and Development (EBRD). He became Managing Director and Member of the Board at the National Bank of Hungary where he was responsible, among other things, for reserve management, open market operations, treasury, and government banking services. He also worked in the private sector as co-CEO of CIB Bank Ltd. a subsidiary of the Intesa Group and later as CEO of Allianz Bank Ltd. (Allianz Group) where he was responsible for the establishment of a new commercial bank with universal banking licence for the market leading insurance company in Hungary.

He holds a doctorate in Finance from the Corvinus University of Budapest and a M.Sc. from the Sunderland University (UK).

Martin Merlin

Deputy Director General - Directorate General FISMA

European Commission

Mr. Merlin is Deputy Director General of DG FISMA (European Commission). He studied international affairs, economics and philosophy in Paris. He has lectured on financial services at the European College of Parma (Italy) and at the Institut d'Etudes Politiques (Paris). He started his career at the French Treasury, where he worked for two years as a Desk Officer in the International Monetary and Financial affairs unit. He joined the European Commission in 1997 to work on insurance and pension funds issues in DG Internal Market. Between 2000 and 2004, he was Assistant to the Director General for the Internal Market. From November 2004 to January 2008 he was a member of cabinet with Commissioner Charlie McCreevy. He left the cabinet to return to DG Internal Market where he was Head of Unit G1 responsible for financial services policy. This unit is, inter alia, in charge of defining and implementing the European's Commission policy in the area of financial supervision.

Alexandra Jour-Schröder

Acting Deputy Director General - DG JUST

European Commission

Alexandra Jour-Schroeder is Acting Director Deputy Director General in the DG Justice of the European Commission in Brussels. It develops European Union policies and legislation to enhance co-operation in criminal matters, to fight against crime in particular the financing of terrorism and money-laundering. Her Directorate strongly co-operates with the Financial Action Task Force.

Following first assignments in the German federal government, Alexandra Jour-Schroeder started in 1996 to work for the European Commission where she has held so far different jobs including competition, enterprise and industry policies. She served as an advisor to EU Commissioners from 1998 to 2007. Since 2011 she works in the Justice Department where she had several management functions. Since 2011 she headed the Unit in charge of EU criminal law and leads since October 2016 the unit for financial crime and is since autumn 2015 Acting Director for Criminal Justice.

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BRUSSELS

REPLIES TO THE WRITTEN QUESTIONS

ING replies

1. At a hearing in the Belgian Parliament in May 2016, Mr Rik Vandenberghe, a representative of ING Belgium stated that it was very clear that ING did not wish to collaborate with offshore structures. Two years later, in new documents obtained in the “Panama Papers”, the name of ING Belgium appears 965 times, more precisely, that of "ING Belgium, Brussels, Geneva branch".

   According to *Le Soir*, the Panama Papers make it possible to establish a direct link between the ING branch in Geneva and tax havens. At least 25 offshore companies (in Panama and the British Virgin Islands) are connected with ING Belgium, Geneva branch, mostly by the opening of a bank account. The opening of these accounts hosted under an offshore structure dates sometimes back of more than ten years. Most of beneficial owners of these accounts are wealthy Russians who are active in the oil and gas sector. Against this background:

   <u>How do you explain the apparent contradiction between the statement made at the hearing before the Belgian Parliament and the reference ING in documents in the Panama Papers?</u>

   In 2016 the then CEO of ING Belgium made a lengthy and detailed statement in the Belgian parliament. The summary given in this question does not fully summary what Mr. Vandenberghe stated at that time.

   He stated that it is ING’s policy not to cooperate in creating offshore structures to facilitate tax evasion. We are very clear about this. But he also made it clear that as a large Wholesale bank, active in over 40 countries, we deal with many clients who have operations in multiple jurisdictions. In principle clients themselves are responsible for how they organise their businesses and for the choice of legal entity through which they to do business with us.

   It is also our policy not to provide tax advice. Our policy in accepting clients and their business, especially when it comes to this aspect, is that we act carefully. First of all we are committed to conducting our business with integrity, which includes compliance with applicable laws, regulations and standards in each of the markets and jurisdictions in which we operate. In addition to this, we have our own business principles which also starts with the principle of integrity above all.

   Having said this, there can be valid reasons for a client to conduct their business with us through an offshore entity and for us to accept that if it falls within our policies.

   <u>Could you disclose the share of Russian clients in the Geneva branch of ING Belgium?</u>

   The Geneva Branch of ING Belgium offers corporate banking/lending, trade and commodity finance and payments and cash management services to Wholesale Banking clients. Geneva branch services 550 Trade and Commodity Finance (TCF) accounts and 300 corporate clients accounts. TCF activities focus on the following sectors energy, metals and “Soft Commodity” (i.e. food and agricultural products – wheat, grains). The Geneva market is the most important European hub for commodity trading, with notably more than 8,000 people working in the industry (commodity traders, but also insurance companies, law firms, banks, accounting, forwarding, security firms, and shipping companies). E.g. 50% of the world’s coffee trades and 35% of oil trades take place in the Geneva region. Percentage wise, the Russian ownership of client relationships and Russian nationality is in line of activities and evolution of the energy market.

   Regardless of the nationality of the client relationships, all client relationships are subject to Know Your Customer/CDD requirements, to tax compliance regulations and to sanction screening. Ultimate Beneficial Owners for all relationships are identified and verified upon start of the client

relationship and upon any change in ownership thereafter. Tax compliance procedures require a clear rationale to be present in case clients use offshore structures. In case of a hit with the sanction lists, the necessary, mandatory measures are taken (e.g. freezing of the accounts and funds).

Following the fine paid by ING as a settlement with the Dutch prosecutors, ING claims that it has since improved its procedures for admitting and vetting clients. Could you describe what specific measures has the Bank taken?

ING has since 2016 started various initiatives at ING Netherlands to further strengthen its management of compliance risks, under the supervision of DNB:

- *An enhancement programme to ensure compliance with 'know your customer' (KYC) and 'client activity monitoring' requirements.*
- *Centralising and simplifying operational KYC activities into one 'KYC Centre' across divisions, introducing standard processes and tooling.*
- *Set-up Client Risk Committees across business units.*
- *An engagement programme to strengthen the internal compliance culture and awareness.*
- *Active involvement in and contribution to the taskforce FEC-RAAD, where Dutch authorities that have supervisory, control, prosecution or investigation tasks cooperate with financial sector actors to strengthen the integrity of the sector.*

Have you initiated or taken part in any initiative to recover the assets laundered? Are you aware of any criminal prosecutions against individuals, namely clients of ING, connected to the funds apparently laundered through ING?

ING does not have the authority to initiate such action and we cannot disclose what any public authorities may request relating to clients of ING (e.g. freezing of assets). That being said, ING is of course cooperating in full with the said public authorities as to such requests.

ING is aware of an out-of-court settlement with one client connected to the investigation scope and one case currently being prosecuted against a client of ING that was part of the investigation by the Dutch Public Prosecutor Office at the beginning of the criminal investigation.

2. It has been reported that ING has been frequently warned at least since ten years ago that its money laundering controls were lax. What measures had been taken during these years to improve the internal anti-money laundering controls? How do you explain that they have not been efficient to detect and prevent serious episodes of money laundering in the Bank?

Evidently in the past years we did not invest enough money and attention in this.
ING sincerely regrets that these shortcomings may have enabled customers to misuse accounts at ING Netherlands.

ING formulated its global KYC Programme in 2016 and it was formally approved in January 2017. It focuses on providing structural solutions and lasting improvements and includes:

- *Continuous file enhancement for KYC and the related processes on how to complete and classify a customer file for KYC, improved reporting of suspicious transactions, setting up more effective processes for customer exits and continuing to improve transaction monitoring. Enhancement programmes for all customer portfolios of Business Units (Market Leaders, C&G and WB) are ongoing to ensure the total client portfolio is brought up to standard with the latest requirements.*

- *Design and implementation of bank-wide structural solutions for anti-money laundering (AML).*

Five workstreams are in place to realise these bank-wide KYC goals:

- *Policy and risk: focuses on (i) annual implementation of a Risk Appetite Statement; (ii) developing a uniform approach for KYC; (iii) combining customer data to generate integrated risk profiles; (iv) improving working methods;*
- *Digital service platform: focuses on (i) setting up a uniform KYC application; (ii) setting up state-of-the-art media screening application to more quickly and accurately address AML signals of customers; (iii) developing Advanced Analytics and Artificial Intelligence skills to tackle AML;*
- *Transaction monitoring: focuses on (i) transaction monitoring by customer type and development of scenarios that indicate money laundering risks; (ii) developing and implementing improved alert definitions; (iii) setting up consistent validation and test processes, with continuous feedback and improvement loops;*
- *KYC governance: focuses on enhancing bank-wide KYC through strengthening second line of defense (Compliance), setting up a first line of defence global KYC organisation, and establishing Client Integrity Risk Committees (CIRC) bank-wide. In the CIRCs, business and staff functions (including Compliance and Legal) decide on whether or not to continue relationships with clients;*
- *KYC mindset: focuses on communication, awareness and training. The training focuses on KYC in general and structural solutions described above.*

3. Do you intend to introduce mechanisms for the improvement of corporate governance when it comes to internal communications with a view to effectively fighting against money laundering within the Bank? If so, which ones?

The Supervisory and Management Boards of ING recognize the importance of KYC/AML and decided strengthening of the compliance function, through ongoing investments (as indicated above), education and ongoing dialogue.

The Steering Committee of the KYC Programme is chaired by the Chief Operations Officer (COO) and Chief Risk Officer (CRO) of ING Group.

- *All departments with responsibility for KYC in the businesses, Compliance and Audit are fully involved. Quarterly progress reports are provided to the Executive Board and Supervisory Board*
- *The KYC Programme is carried out under the supervision of and with constant engagement with the DNB. The DNB is regularly informed through dialogues with ING, meetings with members of the Management Board Banking and quarterly progress reports.*
- *Full-day senior management trainings on KYC/AML have been held this year and will continue going forward.*
- *Active dialogue between senior managers and their teams*
- *ING NL rolled out an Integrity program in March 2018 to help strengthen the internal compliance culture.*
- *Behaviour Risk Assessments are undertaken to analyse the behaviour of employees and teams with regard to Risk Management.*

4. Under which circumstances may executives of ING be dismissed without compensation? Is it failing to inform the board of directors of potential systemic breaches of law in any of the ING branches a

ground for dismissal of an ING executive? Have recent episodes of money laundering in ING led to changes in the formulation of contracts with senior staff and executives?

- *ING expects its employees to uphold the highest standards of integrity and this is a core component of ING's Orange Code, codifying the values and behaviors expected of all employees*
- *Additionally, ING has a comprehensive Remuneration Regulations Framework (annually reviewed and approved by both Managing Board and Supervisory Board), capturing all relevant remuneration regulations and legislation for senior management and employees, in particular its Material Risk Takers (Identified Staff), including but not limited to the EBA Guidelines on Sound Remuneration Policies and the Dutch Act on Remuneration Policies of Financial Undertakings (Wet Beloningsbeleid Financiele Ondernemingen-Wbfo).*
- *Said Framework and ING's general (HR) standards and policies prescribe that, indeed, any employee, failing to inform the Managing Board of potential systemic breaches of legislation and/or regulation in any of ING's branches, subsidiaries or activities, can be subject to a range of disciplinary measures, including but not limited to dismissal, suspension, a risk modifier (a reduction of in-year Variable Remuneration), Holdback (a forfeiture of prior year, unvested Variable Remuneration) and/or Claw Back (a requirement of an employee to pay back to ING any or all prior year Variable Remuneration already paid out to that employee, where allowed under national law)*
- *Moreover, there are a number of other reasons why employees can be dismissed without compensation and these are typically cases where employees are dismissed "for cause", as defined by national legislation and include such situations where an employee has committed fraud, embezzlement or been the instigator of any form of discrimination*
- *In those cases where dismissal is the measure taken, the employee is likely not entitled to any form of severance payment as this may constitute "reward for failure" and is not allowed under ING's Remuneration Regulations Framework. In taking that decision, ING also needs to ensure it acts at all times in line with relevant local labor laws and contractual arrangements.*
- *ING is looking at a variety of additional measures to be taken in the aftermath of the settlement and these may lead, where necessary and appropriate, to changes in contractual arrangements. It needs to be said that ING's policies, including the Remuneration Regulations Framework mentioned before already apply and that each time an individual receives Variable Remuneration, the respective Award Certificate reinforces that.*

5. Has the Bank already taken any measure in the direction of the fifth Anti-Money Laundering Directive?

Once the final text of the AMLD-5 was available, we have made an internal assessment on how the AMLD-5 requirements impact our KYC Policies and control framework. Some of the new requirements are already included in our ING KYC Policies. As a number of new obligations (most notably in the area of enhanced due diligence for clients involved in high risk countries) require more clarification which should be provided through the transposition of the AMLD-5 in national Law (deadline 19 January 2020), we have (through the Dutch Banking Federation) requested the Ministry of Finance to start this process at the earliest convenience.

Danske Bank's written reply to questionnaire from the TAX3 Committee in connection with the public hearing on "Combatting Money-Laundering in the EU Banking system" on 21 November 2018.

(1) What are the specific provisions of the Non-Disclosure Agreements (NDAs) Danske Bank's employees in its Estonian branch were required to sign?

- **a. Do these NDA's contain provisions enabling whistle-blowers to share information with authorities and relevant decision makers without fear of reprisal?**
- **b. Do these NDA's make it explicit that reporting on illegal activities is not covered by the NDA?**
- **c. Do the NDA's used by Danske Bank go beyond specific legal requirements to protect the personal information of clients?**

NDAs are generally used to set out and/or highlight a contracting party's obligation to keep confidential the knowledge obtained during the course of the contractual relationship. The NDAs used by Danske Bank in Estonia do not go beyond applicable legal requirements, rather they contain standard clauses commonly used in such agreements. They do not deal specifically with whistleblowing nor do they aim to restrict the rightful use of whistleblowing schemes and rights.

We are in no way opposed to a whistleblower sharing his or hers knowledge about suspicious activities with lawmakers, regulators or authorities including at parliamentary hearings to the extent applicable law makes it possible – on the contrary we would encourage it.

No employee of Danske Bank is prohibited from talking to the police or other authorities if he or she has knowledge about suspicious matters. However, we cannot relieve a whistleblower – or any other employee – of statutory obligations such as the duty of confidentiality in respect of customer matters, specifically where the relevant data is protected and disclosure is prohibited under the banking secrecy provisions of applicable law. These duties are imposed by relevant governing law, not by Danske Bank.

(2) On which date and in what way was the Danske Bank board of directors made aware of the suspicion of breaches of AML-requirements in the Estonian branch?

- **a. Were individual members of the board, e.g. the chairman of the board, informed in advance of this date, and if so when?**

The Report on the Non-Resident Portfolio commissioned by Danske Bank sets this out in detail, so for a full overview, please refer to the report published on our website (danskebank.com/investigations).

Of the findings and conclusions of the report, we can highlight that, up until 2014, reporting on the Estonian branch from Group Compliance & AML to the Executive Board and the

Board of Directors was overall comforting, just as reporting from Group Internal Audit was generally positive.

Following the whistleblower report and conclusions reached by Group Internal Audit, the Audit Committee (but not the chairman of the Board of Directors) received some information in January and April 2014 and the Board of Directors (including the chairman of the Board) also received some information in April 2014. That information was accompanied by assurances that problems were being dealt with and mitigation was ongoing.

(3) Under which circumstances can executives of Danske Bank be dismissed without compensation?

a. Is it failing to inform the board of directors of potential systemic breaches of law in Danske Bank's branches a ground for dismissal of executive staff?

b. Has the circumstances surrounding the Estonian branch led to changes in formulation of contracts with senior staff and executives in Danske Bank?

The possibility of dismissing executives without compensation depends on applicable legislation in the country in question and on the terms of the agreements concluded with each individual executive. In general, a summary dismissal will require that the executive is guilty of gross misconduct and thus has neglected her or his legal obligations under the relevant employment contract and/or regulation.

Danske Bank is improving processes and quality standards on an ongoing basis – so contracts, remuneration policies and governance have undergone several significant changes during the past years. Danske Bank complies with applicable rules on deferral of variable remuneration, back testing and clawback in order to ensure that only sustainable results are rewarded and that members of the Executive Board in Denmark are not entitled to severance pay when their contracts are terminated. Members of the Executive Board are entitled to their normal remuneration during their notice period, however, subject to not having taken up another position.

(4) According to the "Report on the Non-Resident Portfolio at Danske Bank's Estonian branch" (Bruun & Hjejle, 19 September 2018) Danske Bank at Group level became aware "[i]n early 2014 (...) that AML procedures at the Estonian branch involving the Non-Resident Portfolio had been manifestly insufficient and inadequate. It was also realised that all control functions (or lines of defence) had failed, both within the branch and at Group level".

- **a. According to the Danish Financial Supervisory Authority (FSA), the board of directors decided in October 2014 to postpone a decision on the Estonian branch to January of 2015. On what grounds did the board of directors reach this decision?**
- **b. Did Danske Bank formulate plans to sell-off the Estonian branch or parts of its portfolio in the period between becoming aware of the systemic breaches of AML-requirements and the ultimate closure of activities in 2016?**
- **c. Why was the Danish FSA first informed in January of 2015? As per its own report of May 2018.**

First of all, we acknowledge that there were serious failures in this case, for which we take full responsibility. Our controls were inadequate, as was our understanding of the risks involved with this group of customers and our ability to fully comprehend the risk when we received warnings about the non-resident portfolio in Estonia. When it became clear that there were severe breaches of AML procedures at our Estonian branch, we took action. But with the knowledge we have today, it is clear that this action was not sufficient and was implemented too slowly.

We have, and rightfully so, received criticism for not providing sufficient information to the Danish FSA on several occasions up to and including 2017. One reason why it was difficult to share information was that we did not have an overview of the facts and course of events. In hindsight, one of the lessons learned is that we must improve the handling of our dialogue with the Danish FSA. Consequently, we are in the process of establishing a central unit to ensure that we provide adequate information to the Danish FSA with sufficient involvement of the Board of Directors and the Executive Board. We have subsequently, and concurrently with our investigations, shared material with the Danish FSA.

We have also shared with the public the report of 19 September 2018 prepared by Bruun & Hjejle.

Pages 58 to 60 of the report describe the deliberations of the Executive Board and the Board of Directors in relation to the Baltic banking strategy process in 2014 and 2015, which was related to the Baltic banking activities as a whole and not specifically to the non-resident portfolio in Estonia. Various options were considered as part of the strategy and it was decided to reposition the bank towards a Corporate Baltic bank with focus on Nordic

customers. At the time of that discussion, the perception at Group level was that measures had been taken to address the problems identified with the non-resident portfolio in Estonia and that they would be completed during 2014.

(5) Has Danske Bank in any communication with Mr Wilkinson or his legal representative made mention of their intention to, consideration of or possibility to press charges or initiate legal proceedings based on the provisions of the NDA?

Danske Bank has not used provisions in any NDAs to prevent anyone from speaking with authorities such as the Danish FSA, the Estonian FSA or the police in this case. It is also important to underline that no employee of Danske Bank is prohibited from talking to the police or other authorities if they have knowledge about suspicious matters pertaining to Danske Bank.

In relation to NDAs, we are not in a position to do anything more than release a person from his or her contractual duty of confidentiality in relation to Danske Bank. We cannot remove the legal obligations any employee must observe, for example the duty of confidentiality in respect of customer matters.

(6) According to the report prepared by Bruun & Hjejle, Danske Bank failed to nominate an AML responsible person in the period from late 2012 until November 7th 2013, despite this being a clear requirement under Danish law.

- **a. Was the bank at group level aware of this failure to comply with AML provisions?**
- **b. Was the situation discussed at executive or board level?**
- **c. Who would have been responsible for the nomination of an AML responsible person?**

At the end of 2012, the employee appointed as Danske Bank's AML responsible person retired. Due to an administrative error, a new AML responsible person was not formally appointed until November 2013. The Head of Group Compliance & AML acted as the person responsible for AML activities during that period.

(7) Russia's central bank reported suspicious transfers in the Estonian branch of Danske Bank already in 2007 to the Danish banking supervisor. Also in 2007, the Estonian banking supervisor published a critical report on Danske Bank. Why did they not lead to thorough inspections? Why did the Bank not take extra measures to carry out CDD?

As stated in the public report, Group functions in Denmark generally relied on the reports and answers received from the Estonian branch. This included the fact that the Estonian branch had historically had many non-resident customers and that the necessary controls were in place. Group management in Denmark was hence of the perception that the controls necessary to handle the risk posed by the non-resident portfolio were in place.

However, the investigations have clearly demonstrated that this was not the case. Danske Bank failed to react because our control systems and internal reporting did not work as intended. The risks associated with the portfolio were not fully understood. As a result, actions were not taken in due time to respond to the warnings received. This also meant that we did not discover the full extent of the problems in Estonia in due time.

(8) The Bruun & Hjejle report mentions that employees of Danske Bank may have colluded with customers to get around background and security checks. The Bank stated that it had reported some of its employees and former employees to the Estonian police. Why was that collusion not detected earlier? How is such collusion possible without management's knowledge? How are the criminal procedures progressing? Does Danske Bank blame the employees for acting on their own behalf?

As the report shows, the internal reporting process was inadequate and the severity of the situation was not fully understood at Group level. The organisation in Denmark did not realise the gravity of the situation in Estonia.

In connection with the investigations, we have reported 42 employees to the Estonian authorities by filing Suspicious Activity Reports (SARs). Eight of these have also been reported to the police. We cannot comment on the progress of criminal procedures, as it is up to the authorities to investigate the reports on suspicious behaviour and possible collusion. What type of collusion and whether there is in fact a link to actual money laundering is for the authorities to determine.

(9) The investigation on the non-resident portfolio carried out has gone through 6,200 customers starting with customers hitting the most risk indicators. The vast majority of these customers have been deemed suspicious. What was the state of corporate governance at the Bank for this to have happened for years and without serious CDD having been carried out?

The events that took place in Estonia were not representative of the general state of affairs at Danske Bank. Estonia was the only branch that had a portfolio of only non-resident customers. The non-resident portfolio was closed down in late 2015, with a few remaining accounts closed down in early 2016. The portfolio consisted of high-risk customers, but Group management in Denmark was of the perception that the controls necessary to handle the risk posed by the non-resident portfolio were in place.

At the time, the Estonian branch was not covered by the same customer systems and transaction and risk monitoring as other parts of the Group because it operated on a separate IT platform. That meant that Group management did not have the same insight into the branch as it did into the other parts of the Group. Furthermore, many documents at the Estonian branch, including information about customers, were written in Estonian or Russian.

Danske Bank has since taken steps to improve our anti-money laundering procedures, both in Estonia and at Group level. We are in a different place today when it comes to combating financial crime, and we have taken, and will continue to take, the required measures. The AML area will remain a key priority.

(10) One of the reasons given in the Bruun & Hjejle report for the banks failure in money laundering checks is the separate IT systems for the headquarters and the Estonian branch. Why were these systems not integrated?

There are no excuses for what happened in Estonia. The fact that the Estonian branch was allowed to run on a separate IT platform is one of many serious faults in this case.

The migration of the Baltic units to the Group IT platform was planned at the time of the acquisition, but was eventually abandoned on grounds that it was considered too expensive and required too many resources. The risk resulting from allowing a separate IT platform was not realised.

The Baltic units have since been migrated to a shared and integrated IT platform, which ensures a higher degree of transparency and control.

Svenska Bankföreningen
Swedish Bankers' Association

November 16, 2018

Questionnaire

1. The Swedish Bankers' Association was invited to a hearing during the mandate of the PANA Inquiry Committee, which preceded the TAX3 Committee. Why did your organisation refuse to attend that previous hearing?

   Initially, we regret any misunderstanding between the European Parliament and the Swedish Bankers´ Association. However, it should be noted that the Swedish Bankers´ Association did not receive an official invitation to the hearing in 2017. A representative from the European Parliament contacted the association via e-mail, as we perceived, to probe who or which body could best answer the Parliament´s questions regarding Swedish AML-regulation in relation to the Panama Papers. The representative from the European Parliament pointed out in the e-mail that this correspondence preceded a potential official invitation from the chairman. The Swedish Bankers´ Association assessed the Swedish Financial Supervisory Authority, Finansinspektionen, as the correct body to answer the question since Finansinspektionen has knowledge both of internal conditions of the Swedish banks and the AML-regulations. This was also our answer.

   Because the Swedish Bankers´ Association perceived the contact as a probe to find out who might be the relevant body to invite and since the association did not receive an official invitation, the association believes it was helpful and assisted with contact details to the most suitable recipient. We have not in any way had the intention to refuse an invitation from the European Parliament to attend a hearing.

2. Do you think that money laundering in Banks is a general problem or that the cases such as those affecting Danske Bank, ING, ABLV and Pilatus Bank are exceptions?

   The Swedish Bankers´ Association is an industry organization and as such the association represents banks and financial institutions established in Sweden.

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The aim is to contribute to a sound and efficient regulatory framework that facilitates for banks to help create economic wealth for customers and society.

The association

- *represents the member companies nationally and internationally*
- *works closely with regulators and policymakers in Sweden and Europe*
- *establishes joint rules in matters of common interest in the Swedish banking industry, such as payment infrastructure and security issues*
- *informs the public about the banking sector.*

However, the association does not have the power nor the mandate to

- *supervise any part of the member companies*
- *examine or intervene in the member companies' strategies or business decisions*
- *decide binding recommendations or guidelines.*

As an industry organization for Swedish banks, we of course take money laundering seriously. But the association does not have any more information about the foreign banks than is reported by the media. It is therefore impossible for the association to comment on individual banks.

3. There are constant allegations in the media of Scandinavian banks being involved in money laundering activities. What is the reason, in your opinion, for such allegations? How do you respond to these allegations and how do you plan to tackle this issue?

As mentioned earlier, the association takes money laundering seriously. This is, however, a very complex regulatory area and therefore difficult to fully grasp. To understand the present situation, it is important to understand the regulatory environment and the banks´ activities.

Over the past ten years, the requirements and regulations regarding AML and internal control have increased significantly with focus on know-your-customer, monitoring of transactions and internal control. The Swedish banks have, as far as the association is aware, invested considerable resources to incorporate and comply with all new requirements laid down.

Within the Swedish context, banks have to review or monitor, with a risk-based approach, a large number of money transactions. For 2016, the number

of money transactions reached 5 054 million. Of course, in a review only an extremely small fraction of these transactions could be considered suspicious transactions. The financial sector should prevent money laundering by setting up internal systems and procedures. However, it is not the task of the financial sector to undertake the role of supervisor, police or prosecutor.

4. How does the Swedish Bankers' Association assist Swedish banks and their branches abroad to implement measures on anti-money laundering? Is the Swedish banking sector ready for the implementation of the requirements included in the fourth and fifth Anti-Money Laundering Directives? How is the level of implementation of those requirements?

   The fourth AML-directive was transposed into in Swedish law on August 1, 2017. The Ministry of Finance has proposed a transposition of the fifth AML-directive with a proposed entry into force in 2020.

   In order to assist the members of the Swedish Bankers´ Association with the interpretation of the AML regulations The Swedish Bankers´ Association in cooperation with six other industry organisations within the financial sector (The Association of Swedish Finance Houses, the Swedish Investment Fund Association, the National Association of Swedish Savings Banks, Insurance Sweden, the Swedish Securities Dealers Association and the Swedish Insurance Brokers Association) formed the Swedish Anti-Money Laundering Institute – Simpt – in 2016.

   The aim of Simpt is to produce guidance for financial companies in the interpretation and application of the rules and measures to prevent money laundering and financing terrorism. The objective is to establish good practice within the field and to provide the right conditions for more effective application of the regulations.

   Preventing money laundering and financing terrorism is for many reasons a very important issue in the banking sector, not least is it a matter of confidence. There is no Swedish guidance in this field. However, the demand for such guidance is large. By creating Simpt and in producing industry guidance, the banks take joint responsibility in this important area.

Money laundering and financing of terrorism is an international matter and the Swedish Bankers' Association is currently investigating the possibility to cooperate with the Nordic associations.

5. Do Swedish banks and/or their branches in other countries have a large non-resident portfolio?

As previously mentioned, the Swedish Bankers´ Association only represents banks and financial institutions established in Sweden. The work of the association is aimed at contributing to a sound and efficient regulatory framework that facilitates for banks to help create economic wealth for customers and society. As such, the organization has no information about individual members´ business activities. At an aggregated level the association has basic facts about the Swedish banking market such as the number of transactions, deposits from the public, lending to the public etc. Thus, the association does not have information at customer level.

6. As from March 2018, Nordea has moved its Headquarters from Stockholm to Finland. The alleged reason for the move is a conflict between the bank and the government authorities and the fact that Sweden is outside the European Banking Union. Are you in a position to further elaborate on Nordea's move to Finland and on how this move has affected Swedish economy and banking sector?

As mentioned previously, the Swedish Bankers´ Association is not involved in individual business decisions. Regarding the consequences of the relocation of the headquarter to Finland, the differences are marginal from a customer and market perspective. This is because Nordea still operates as a bank in Sweden, but now as a branch. For the supervisory authorities, the relocation of the headquarter has caused major changes since Finland or the European Central Bank now has the supervisory responsibility.

7. Under which circumstances may executives of Swedish banks be dismissed without compensation? Is it failing to inform the board of directors of potential systemic breaches of law a ground for dismissal of executive staff in Swedish banks? Have recent episodes of money laundering in EU banks led to

changes in the formulation of contracts with senior staff and executives in Swedish banks?

The basic rules for termination and dismissal of an employee are contained in the labour law, the Employment Protection Act (SFS 2016:1271). The Act does not apply to the Managing Director or senior executives in large companies, e.g. a division manager. For this group, the terms set forth in the employment contract apply.

Employees under the Managing Director or the division manager are governed by the Employment Protection Act and are protected by the legal requirements for termination and dismissals in the Act. There is a difference between terminating and dismissing an employee. For dismissal to be used in accordance with the Act, the employee must have intentionally or grossly negligently committed the act (e.g. theft, abuse and embezzlement aimed at the employer or other employees, disloyal competition of serious nature such as revealing professional secrets to harm the employer). If an employee is dismissed, the employment expires without any protection by the Act after the day of dismissal. In case of termination the employee is covered by the requirements in the Act in terms of termination with retained benefits. For this category of employees, additional terms may be found in union agreements.

Employees, who are not covered by the Employment Protection Act, e.g. Managing Director or division manager, lack the protection stipulated in the Act regarding termination and dismissal. This means that they are only covered by the terms of the employment contract regarding for example compensation. It is common that such employment contracts contain a clause with the same meaning as stipulated in the Act regarding the ground for dismissal, i.e. in case of a serious breach of the contract the right of compensation expires. This category of employees is also entitled to earned but not yet paid benefits until the day of termination or dismissal unless otherwise is agreed in the contract. This category of employees is not normally covered by a union agreement.

Finansinspektionen (FSA) has issued regulations regarding remuneration structures in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management (FFFS 2011:1). According to that regulation a company shall ensure that deferred variable remuneration components are only paid or passed to the employee to

an extent justifiable by the company´s financial situation and the performance of the firm, the business unit in question and the employee. The deferred portion of the remuneration shall also be able to be cancelled in full for the same reasons. A company shall, in its remuneration policy, establish criteria for the application of adjustment of deferred remuneration.

The Bank- and Financing Business Act (SFS 2004:297) contains provisions on reporting of violations in section 6 paragraph 2a and 2 b. A credit institution shall provide appropriate reporting systems for employees wishing to make a notification of suspected breaches of provision applicable to the activities of the credit institution. An employee of a credit institution which has made a notification to the Financial Supervisory Authority (Finansinspektionen) or to the European Securities and Markets Authority of suspected infringements of provisions applicable to the business shall not be held liable for breach of any confidentiality if the notifier had reason to assume that an infringement had happened. The same applies if an employee has made a notification through the credit institution´s internal reporting system.

Whether the law or/and regulations have led to changes in the formulation of contracts within banks is information that the Swedish Bankers´ Association does not have.

SWEDISH BANKERS' ASSOCIATION

Questionnaire

EBA responses – Not for publication. The EBA's introductory statement covers the most relevant responses to this questionnaire.

1) Would the strengthening of European Banking Authority's (EBA) competence and role in anti-money laundering supervision of the financial sector allow it to react quicker and more effectively to prevent episodes of money laundering similar to those of Danske Bank, ING, ABLV and Pilatus Bank?

The Commission's proposals would allow the EBA to more effectively continue our work to improve implementation and coordination with improved resources and legal certainty.

In particular, some changes along the lines in the Commission communication would allow the EBA to:

- maintain our high standards of policy products;
- assist in better and more consistent implementation via independent reviews, feedback and training to competent authorities;
- strengthen the EBA's work to foster effective coordination and communication between agencies and jurisdictions;
- strengthen the EU AML risk infrastructure by helping to draw together quantitative and qualitative information at an EU level to complement national risk work.

Ongoing supervisory implementation visits coupled with a more comprehensive suite of risk assessment tools would help the EBA to identify potential weaknesses earlier and raise issues as they arise. And additional resources would allow us to more proactively assess potential BuL cases.
However, as we have previously highlighted the current minimum harmonisation framework, together with high level provisions in Union law, raises challenges in determining an actual breach or non application of law as Directives allow divergences by design. Also investigations into Union Law will necessarily take time as due process requires.
Most importantly, we believe our main objective should be to improve ex-ante implementation, which in turn should reduce the incidences of potential breaches of union law ex-post.

2. What additional human and material resources would EBA need to carry out efficiently the new tasks assigned in the proposal?

The EBA identified the need for twelve additional skilled staff as a minimum needed to carry out the new tasks adequately. The financial resources needed would be that needed to cover these FTEs would be around EUR2million along with additional investment in IT structures to build a database estimated as a starting point at around EUR 2 million.

3. What is the level of resources invested by Member States in their financial supervisory activities? Do national supervisory authorities consider money-laundering criteria when carrying out their supervisory functions?

The EBA received this questionnaire with limited time to respond and cannot provide precise details. We assume this question relates to AML supervision as separate from prudential and conduct supervision. The EBA has started to collect related information on AML/CFT resources as part of our Joint Opinion on ML/TF risk questionnaires. However, the numbers do not necessarily match this request and require analysis and context to be meaningful depending on the size of the sector, the ML/TF risk associated with the market, the skills of relevant staff and the powers of the authority. Nonetheless we know that resources vary widely across jurisdictions dependent on size and institutional structure, anecdotally we know that in many jurisdictions AML supervision is undertaken by very small teams. Moreover as part of the EBAs future implementation reviews we intend to build up an analysis of the resources of various competent authorities but are unable to provide a quantitative response at this time.

The extent to which NCAs consider AML depends on their powers, although notwithstanding this difference it appears that many prudential supervisors need to do more to build AML risks into their prudential risk perspective.

4. What is the current quality and interconnection of IT systems for information sharing and communication between supervisory authorities? Is it adequate for the specific needs of these institutions? What improvements can be expected in this area?

The EBA received this questionnaire with limited time to respond and cannot provide precise details. The question appears to be focused on FIUs, who need secure channels to share financial intelligence but which is outside of the EBA's mandate for AML supervision.

The EBA is nonetheless concerned about the ability and willingness of AML supervisors to exchange information and this is why we drew up own-initiative GL, which are currently under consultation. The GL will also establish AML colleges and the EBA has experience of providing a colleges platform for confidential information sharing which may be a first step towards improved information sharing across the EU on AML issues.

The European Parliament Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance

Question 1:

Would the strengthening of European Banking Authority's (EBA) competence and role in anti-money laundering supervision of the financial sector allow it to react quicker and more effectively to prevent episodes of money laundering similar to those of Danske Bank, ING, ABLV and Pilatus Bank?

Following the recent anti-money laundering scandals involving banks in the EU, in May 2018, the European Commission set up a working group bringing together the European Supervisory Authorities, the European Central Bank and the Chair of the Anti-Money Laundering Committee, which prepared a reflection paper.

On this basis, the Commission proposed in September 2018 targeted amendments to the founding regulations of the European Supervisory Authorities, the EBA in particular, so that the EBA has the ability to act effectively on anti-money laundering supervision across the financial sector. The EBA will acquire a few more specific tasks such as:

- enhancing the quality of supervision through common standards, periodic reviews of national supervisory authorities and risk-assessments;
- collecting information on AML risks and trends and facilitating exchange of such information between national supervisory authorities (data hub);
- facilitating cooperation with third countries on cross-border cases;
- establishing a new permanent committee gathering the Heads of the national AML supervisory authorities (replacing the current AMLC subcommittee);
- requesting national AML supervisors to investigate possible breaches of EU legislation and taking decisions (such as sanctions) in specific cases, so as to give it binding mediation powers.

This should allow the ESAs to contribute to greater convergence in AML supervision, achieve greater cooperation and information exchange between AML and prudential supervisors and strengthened enforcement.

The Commission has also adopted a Communication on measures to improve the cooperation between prudential and anti-money laundering supervisors, which outlines the Commission's strategy for seamless supervisory cooperation. In addition to the measures included in the legislative proposal, the Commission also advocates further enhancing the prudential framework for banks by improving information exchange and reinforcing the duty of cooperation between prudential and anti-money laundering authorities and bodies: the Capital Requirements Directive

is currently under negotiation between the Council and the European Parliament. The Commission also requests the ESAs, and in particular the EBA, to develop certain guidelines for the competent authorities of the Member States. In the longer term, the Commission invites consideration as to whether the current distribution of supervisory tasks is conducive to a coherent and viable AML system in the Union, and whether the current minimum harmonisation Anti-Money Laundering Directive should be transformed into a Regulation, directly applicable in all Member States. The Commission will reflect on these matters in a report that it will deliver in June 2019.

We believe that the combination of the measures we proposed in the legislative proposal, the non-legislative measures, and the correct transposition and application of the 5th Anti-Money Laundering Directive will contribute substantially to avoiding such cases in the future.

Question 2:

What additional human and material resources would EBA need to carry out efficiently the new tasks assigned in the proposal?

As far as human resources are concerned the Commission's September proposal on AML amending the review of the ESAs' assigns 7.8 full-time staff ("FTEs") to the EBA for the newly assigned AML tasks from 2020. In detail:

- in 2019, 2 Establishment Plan (Temporary Agent) posts and resources for 2 Contract Agents would be made available for EBA;
- in addition to the 2019 posts, in 2020 a further 2 Establishment Plan (Temporary Agent) posts and resources for 1.8 contract Agents would be made available for EBA.

This will come in addition to the existing resources the ESAs already devote to direct AML issues (2.2 FTEs). The total number of FTEs working at the ESAs on AML issues, including the existing and new resources - once the AML proposal goes through and provided the proposed resources are not modified - would therefore be 10.

In terms of material resources, 2 million euros have been allocated for IT. The allocation concerns the setting up and maintaining the database for information gathering and exchanges in relation to AML-relevant findings in the financial sector.

The financial fiche attached to the proposal provides the above mentioned information.

Question 3:

How much staff in DG JUST works in the field of Anti-money laundering?

The Unit responsible in DG JUST for anti-money laundering issues is the Financial Crime Unit, B3. The staff of this Unit has been reinforced in the last two years, from a task force of 5 FTEs, to 12 FTEs and will reach 14 FTEs at the end of this year.

How much staff in DG FISMA works in the field of Anti-money laundering?

The competence for anti-money laundering issues lies with DG JUST. FISMA has no full-time resources for anti-money laundering. It currently has a project team of some 8 persons working with the proposal and the follow-up to the Communication, in addition to their other day to day tasks.

Question 4:

What is the level of resources invested by Member States in their financial supervisory activities?

The Commission does not know the level of resources each Member State invests in their financial supervisory activities. It must be assumed however that Member States are ensuring that competent authorities have the expertise, resources, operational capacity and powers necessary to carry out the functions that Union law requires.

The Commission is aiming to measure the level of resources of the various anti-money laundering supervisors in the context of a study that it will launch next year regarding the implementation of the 4th Anti-Money Laundering Directive.

Do national supervisory authorities consider money-laundering criteria when carrying out their supervisory functions?

The current financial services framework in principle requires financial supervisors to consider money laundering/terrorist financing aspects with respect to a number of their prudential supervisory functions.

However in practice, it seems that financial supervisors may often not sufficiently consider such aspects. One reason is due to the fact that EU prudential rules are not always sufficiently precise, which leads to differing transposition and to divergent supervisory practices across Member States, but there are also no detailed provisions in financial services legislation on cooperation obligations between prudential and AML supervisors which could facilitate timely and regular input of money laundering and terrorist financing related findings into the activity of financial supervisors.

This gap is one of the reasons that the Joint Working Group chaired by representatives of the Commission's Directorate-General for Justice and Consumers, and the Directorate-General for Financial Stability, Financial Services and Capital Markets Union, and including representatives of the European Central Bank, and of the three European Supervisory Authorities, and the Chair of the ESAs Joint Committee Anti-Money Laundering sub-committee proposed that a mapping should be carried out of relevant money laundering and terrorist financing risks and best prudential supervisory practices to address them.

Question 5

What is the current quality and interconnection of IT systems for information sharing and communication between supervisory authorities? Is it adequate for the specific needs of these institutions? What improvements can be expected in this area?

There is currently no unified IT system for information sharing and communication between supervisory authorities. Supervisors in Member States use their existing channels of communication for such communications.

TAX3

Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance

PUBLIC HEARING

"COMBATTING MONEY LAUNDERING IN THE EU BANKING SECTOR"

WEDNESDAY, 21 NOVEMBER 2018

9.15 - 13.00

Room: **PAUL HENRI SPAAK (PHS) 5B001**

BRUSSELS

CONTRIBUTIONS

Stephen M. Kohn
Founding Director | National Whistleblower Center
Partner | Kohn, Kohn and Colapinto, LLP

Effective Whistleblower Protections:

Testimony before the European Parliament

November 21, 2018

"Going after waste, fraud, and abuse without whistleblowers is about as useful as harvesting acres of corn with a pair of rusty old scissors"

— Senator Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the Video --- Read the Speech

"Because those who [commit fraud] often hide their misconduct from public view, whistleblowers are often essential to uncovering the truth."

— Former Acting Assistant Attorney General Chad A. Readler, Department of Justice, Civil Division, in press release titled, "Justice Department Recovers Over $3.7 Billion From False Claims Act Cases in Fiscal Year 2017" (December 2017). Nominated by President Trump to the United States Court of Appeals (nomination pending).

The Problem Facing Fraud Detection

"Honest behavior is not rewarded . . . Given [the] costs [of whistleblowing] the surprising part is not that most employees do not talk, it is that some talk at all."

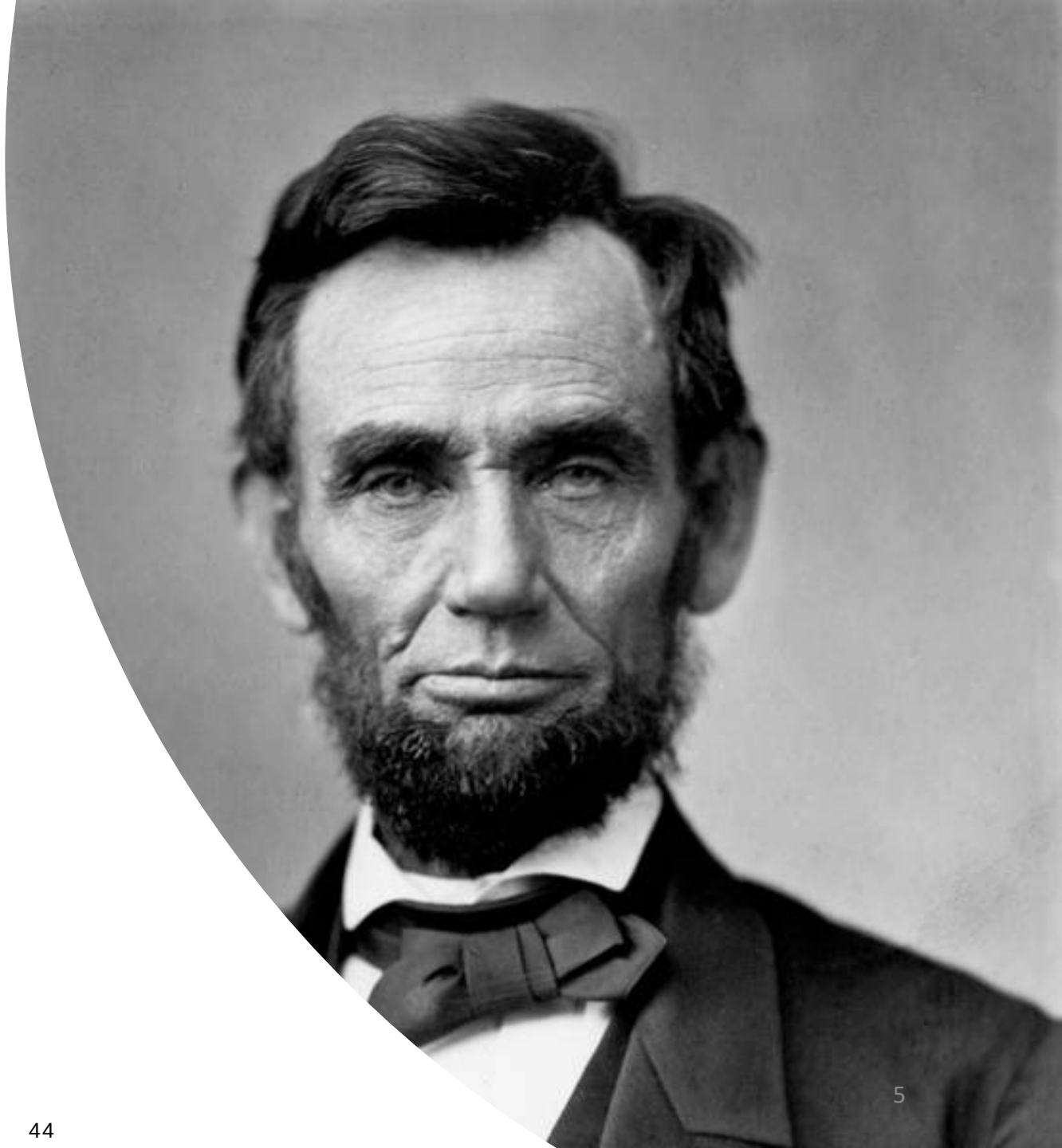
— Alexander Dyck, et al., "Who Blows the Whistle on Corporate Fraud?" The University of Chicago Booth School of Business Working Paper No. 08-22 (2009).

The Solution
Qui Tam - "The Lincoln Law"

On March 2, 1863, President Abraham Lincoln signed the original whistleblower qui tam reward law, the False Claims Act ("FCA"), targeting fraud in government contracting.

It was modernized in 1986.

The FCA incentivizes reporting and is the model for all current whistleblower reward laws.



The Framework for *qui tam* Reward Laws

Initial disclosures are confidentially filed with the Department of Justice. FCA claims are initially filed under "seal" in federal court

Emphasis is on the truthfulness of the information, not on a whistleblower's employment discrimination case.

Compensation is based on whether the information provided by the whistleblower can support a successful prosecution, not on how much a whistleblower suffers due to retaliation.

Whistleblowers who provide original information that leads to a successful enforcement action are entitled to a mandatory reward of between 15-30% of the collected proceeds triggered by their disclosures.

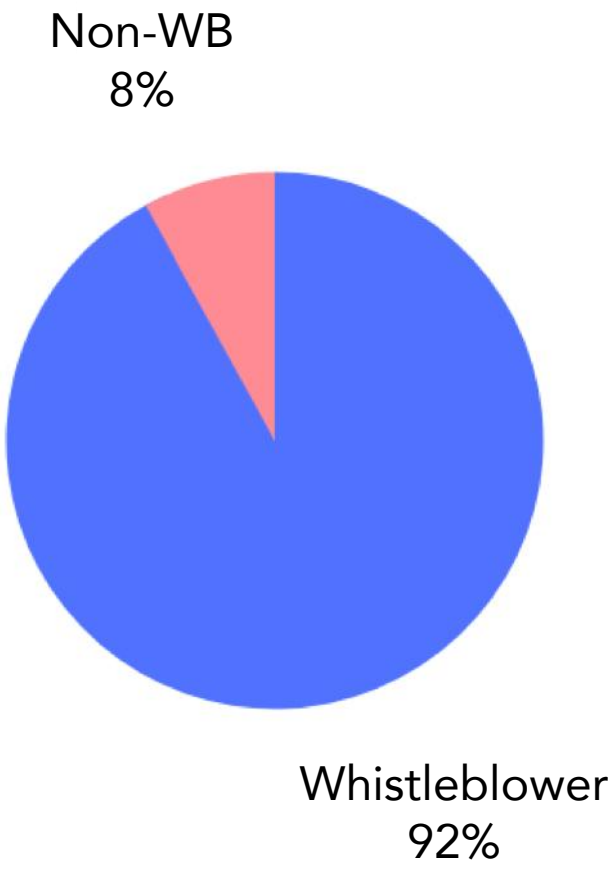
The False Claims Act whistleblower law is "the most powerful tool the American people have to protect the government from fraud."

— Former Assistant Attorney General Stuart Delery - Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014)

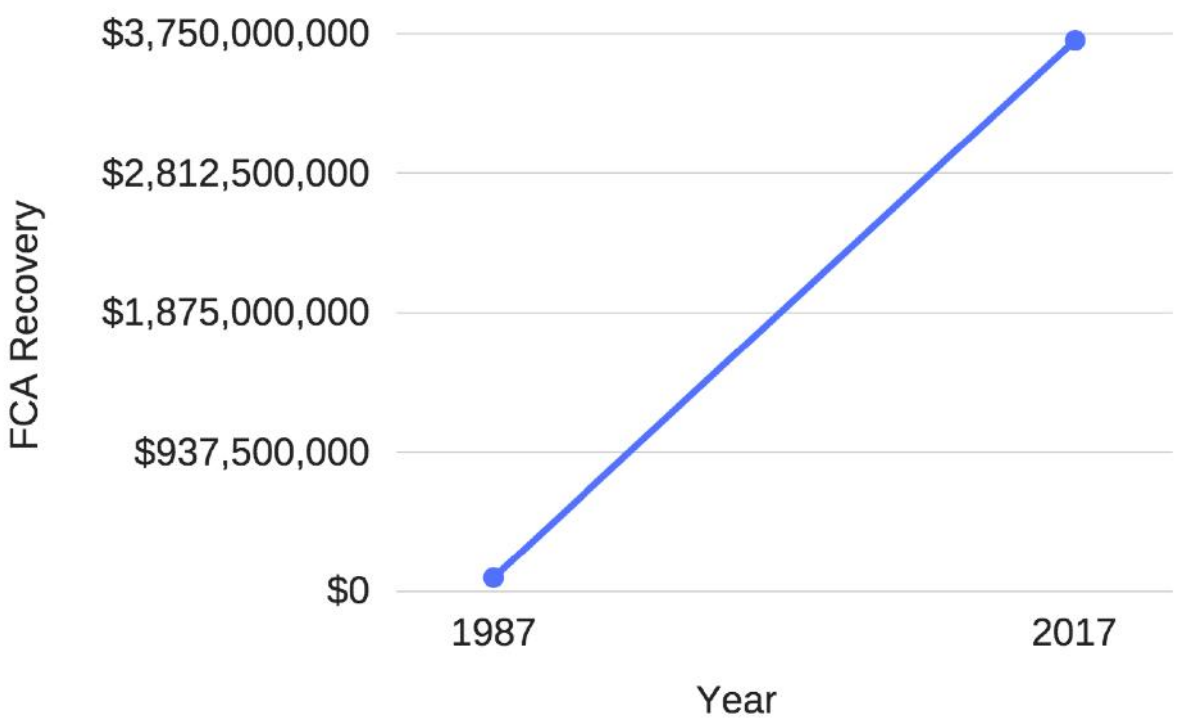
A Whistleblower Program Delivers Significant Benefits

- In FY 2017, the U.S government recovered over $3.7 billion through its civil fraud program.
- Of this amount, whistleblowers were directly responsible for the detection and reporting of over $3.4 billion under the FCA.
- Whistleblowers were the source of the detection of 92.8% of civil fraud recovered in FY 2017.

**numbers are approximate, see prior slide for exact amounts*



In 2017, of the $3.4 billion recovered through the FCA and as a result of whistleblower assistance, $392 million (11.5%) was awarded to whistleblowers.



- Since its modernization on October 27, 1986, the False Claims Act has increased the overall annual recoveries from fraudsters who cheated the government.
- The total fraud recovered in the United States increased from $88.4 million in FY 1987 to $3.7 billion in FY 2017 based on whistleblower disclosures under the FCA.
- Since FY 1987 whistleblowers were responsible for 72% of the funds recovered in contracting or procurement fraud cases.

FALSE CLAIMS ACT FRAUD STATISTICS OVERVIEW
FY 1986 - FY 2017

FRAUD STATISTICS - OVERVIEW
October 1, 1986 - September 30, 2017
Civil Division, U.S. Department of Justice

FY	NEW MATTERS 1		SETTLEMENTS AND JUDGMENTS 2					RELATOR SHARE AWARDS 3		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM			
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL		WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
1987	343	30	86,479,949	0	0	0	86,479,949	0	0	0
1988	210	43	173,287,663	2,309,354	33,750	2,343,104	175,630,767	88,750	8,438	97,188
1989	224	87	197,202,180	15,111,719	1,681	15,113,400	212,315,580	1,446,770	200	1,446,970
1990	243	72	189,564,367	40,483,367	75,000	40,558,367	230,122,734	6,590,936	20,670	6,611,606
1991	234	84	270,530,467	70,384,431	69,500	70,453,931	340,984,398	10,667,537	18,750	10,686,287
1992	285	114	137,958,206	133,949,447	994,456	134,943,903	272,902,109	24,121,648	259,784	24,381,432
1993	304	138	181,945,576	183,643,787	6,603,000	190,246,787	372,192,363	27,576,235	1,766,902	29,343,137
1994	280	216	706,022,897	379,018,205	2,822,323	381,840,528	1,087,863,425	69,453,350	838,897	70,292,246
1995	233	269	269,989,642	239,024,292	1,635,000	240,659,292	510,648,934	45,162,296	465,800	45,628,096
1996	185	340	247,357,271	124,361,203	13,522,433	137,883,636	385,240,908	22,119,619	3,731,978	25,851,597
1997	186	547	465,568,061	621,919,274	6,021,200	627,940,474	1,093,508,535	65,857,419	1,658,485	67,515,904
1998	120	468	151,435,794	438,834,846	30,248,075	469,082,921	620,518,715	70,264,372	8,486,645	78,751,017
1999	140	493	195,390,485	492,924,785	5,067,503	497,992,288	693,382,773	63,018,084	1,374,467	64,392,552
2000	95	363	367,887,197	1,208,370,688	1,688,957	1,210,059,645	1,577,946,841	183,679,377	375,143	184,054,520
2001	85	311	494,496,974	1,215,525,916	128,587,151	1,344,113,067	1,838,610,042	187,590,470	30,701,881	218,292,350
2002	61	319	119,598,292	1,078,174,023	25,786,140	1,103,960,162	1,223,558,454	161,377,822	4,582,319	165,960,141
2003	92	334	711,098,299	1,534,862,352	5,185,911	1,540,048,263	2,251,146,563	337,307,857	1,382,741	338,690,598
2004	111	432	115,656,023	561,717,502	9,261,879	570,979,382	686,635,404	110,224,220	2,376,128	112,600,348
2005	105	406	276,914,983	1,149,047,524	7,481,593	1,156,529,117	1,433,444,099	168,580,543	2,031,695	170,612,237
2006	71	385	1,712,459,257	1,491,105,499	22,711,363	1,513,816,862	3,226,276,119	219,976,072	5,647,836	225,623,908
2007	129	365	564,826,844	1,251,726,955	160,246,894	1,411,973,849	1,976,800,693	192,888,212	4,616,899	197,505,111

FRAUD STATISTICS - OVERVIEW
October 1, 1986 - September 30, 2017
Civil Division, U.S. Department of Justice

FY	NEW MATTERS 1		SETTLEMENTS AND JUDGMENTS 2					RELATOR SHARE AWARDS 3		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM			
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL		WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
2008	161	379	312,193,480	1,045,582,229	12,678,936	1,058,261,165	1,370,454,645	201,682,144	2,997,615	204,679,759
2009	132	433	469,334,681	1,963,356,256	33,776,480	1,997,132,735	2,466,467,417	249,567,135	9,684,147	259,251,282
2010	140	576	647,383,493	2,280,378,123	109,778,613	2,390,156,737	3,037,540,230	370,856,551	30,915,991	401,772,542
2011	125	634	241,365,995	2,648,552,414	173,888,703	2,822,441,117	3,063,807,112	510,875,463	49,041,606	559,917,069
2012	144	652	1,608,112,862	3,344,478,500	45,248,343	3,389,726,844	4,997,839,706	436,125,743	12,711,743	448,837,485
2013	101	756	169,126,772	2,868,519,362	127,348,056	2,995,867,418	3,164,994,190	528,312,018	30,449,937	558,761,955
2014	98	715	1,676,564,226	4,386,325,409	81,378,451	4,467,703,859	6,144,268,085	696,768,578	14,868,000	711,636,578
2015	111	639	732,432,286	1,896,482,996	512,357,184	2,408,840,181	3,141,272,467	344,083,870	137,955,425	482,039,295
2016	147	706	1,856,329,432	2,815,841,067	106,098,069	2,921,939,136	4,778,268,567	497,141,013	29,658,600	526,799,613
2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

Sanctions from whistleblower cases

Rewards paid to whistleblowers

2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

Source: [U.S. Department of Justice]

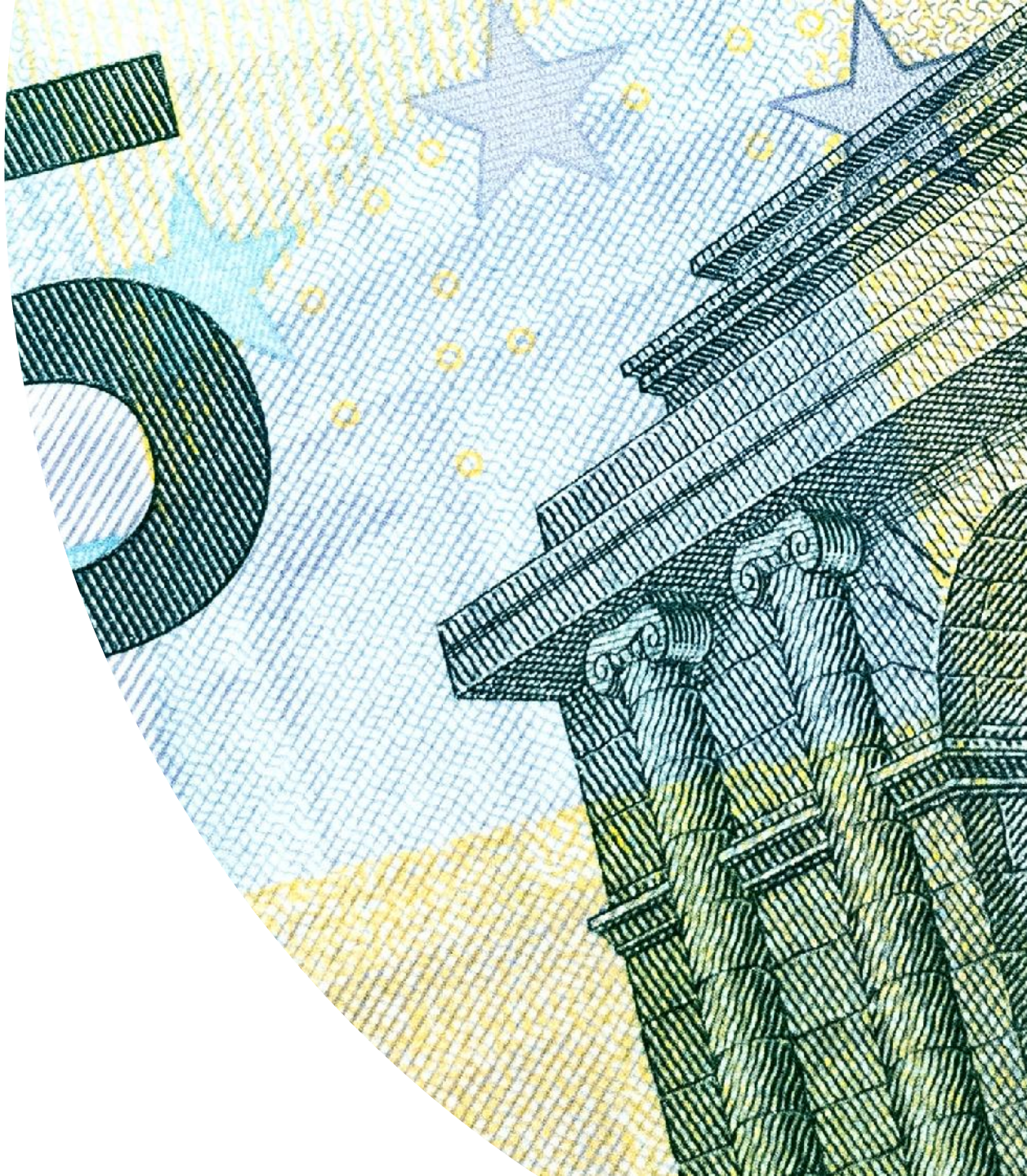
"[T]he False Claims Act has provided ordinary Americans with essential tools to combat fraud . . . their impact has been nothing short of profound."

— Former Attorney General Eric Holder, U.S. Department of Justice, remarks at the 25th anniversary of the False Claims Act (January 31, 2012).

INTERNATIONAL APPLICATIONS OF U.S. WHISTLEBLOWER REWARD LAWS

IRS/Tax Whistleblower Law

- Tax whistleblowers were paid $429.1 million in awards between 2012-2017
- Whistleblowers were the critical source of information on policing offshore Swiss banking violations
- Every known U.S. secret Swiss bank account was closed. Over $16 Billion directly recovered in fines and penalties. 50,000 U.S. taxpayers entered the voluntary disclosure program.



Foreign Corrupt Practices Act
15 U.S.C. §§ 78m, 78dd, 78ff

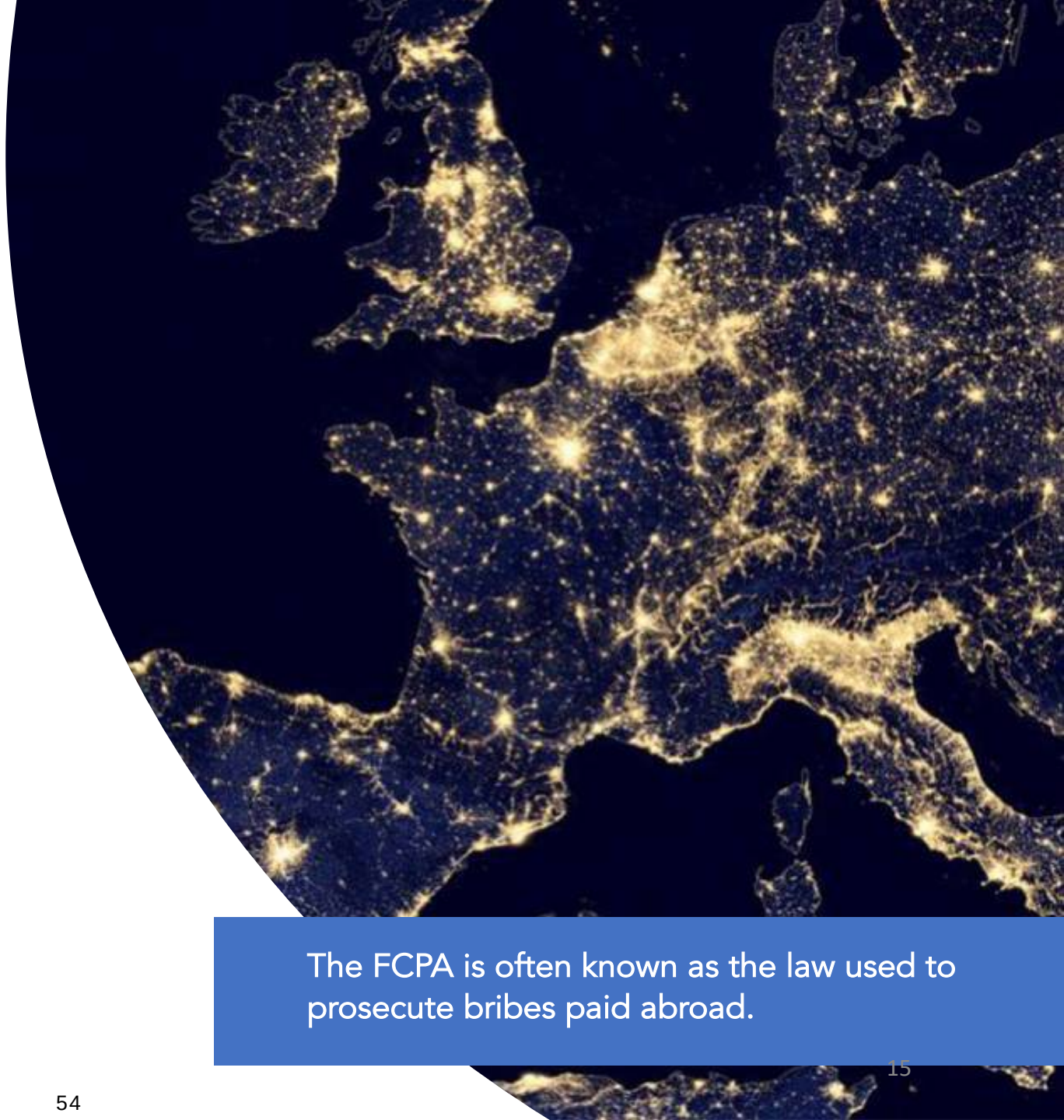
The FCPA prohibits publicly-traded corporations, both U.S. and international, from paying bribes to foreign officials and mandates proper financial recordkeeping.

The FCPA established U.S. jurisdiction for bribes paid in foreign countries by foreign nationals to foreign government officials.

FCPA whistleblowers can obtain financial rewards even if bribes are paid in a foreign country and the whistleblower is a foreign national.

Foreign Corrupt Practices Act (FCPA)

- Since 2011, 2,655 whistleblowers from 113 countries outside the U.S. have filed claims under the Foreign Corrupt Practices Act whistleblower reward provision.
- Over $30 million has been paid to non-U.S. citizens who reported bribes paid overseas, in a single case.



The FCPA is often known as the law used to prosecute bribes paid abroad.

International Tips Received by U.S. Securities and Exchange Commission, 2011 - 2017

". . . it makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas."

— Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, Order Determining Whistleblower Award Claim

Securities and Commodity Exchange Act

Whistleblowers can file anonymous and confidential claims

Eligibility does not depend on U.S. citizenship

Whistleblowers who provide original information that leads to a successful enforcement action entitled to a mandatory reward of between 10-30% of the collected proceeds.

Since 2011 the SEC has paid over $300 million in rewards.

The SEC "whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud."

— Chairman Mary Jo White, Securities and Exchange Commission, Remarks at the Securities Enforcement Forum, Washington DC (October 2013)

University of Chicago Booth School of Business

A critical study on whistleblowing came out of academics from the University of Chicago's Booth School of Business.

Their goal was to "identify the most effective mechanism for detecting corporate fraud."

> *A strong monetary incentive to blow the whistle does motivate people with information to come forward.*
>
> *Monetary incentives seem to work well, without the negative side effects often attributed to them.*
>
> *Employees clearly have the best access to information.*

— Alexander Dyke, et al., University of Chicago Booth School of Business

"Empowering these whistleblowers to prosecute fraud proved to be smarter, faster, and more effective than just relying on the government."

— Senator Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the Video --- Read the Speech

The EU Proposed Directive on Whistleblowing Will Not Prevent Money Laundering or Bank Frauds

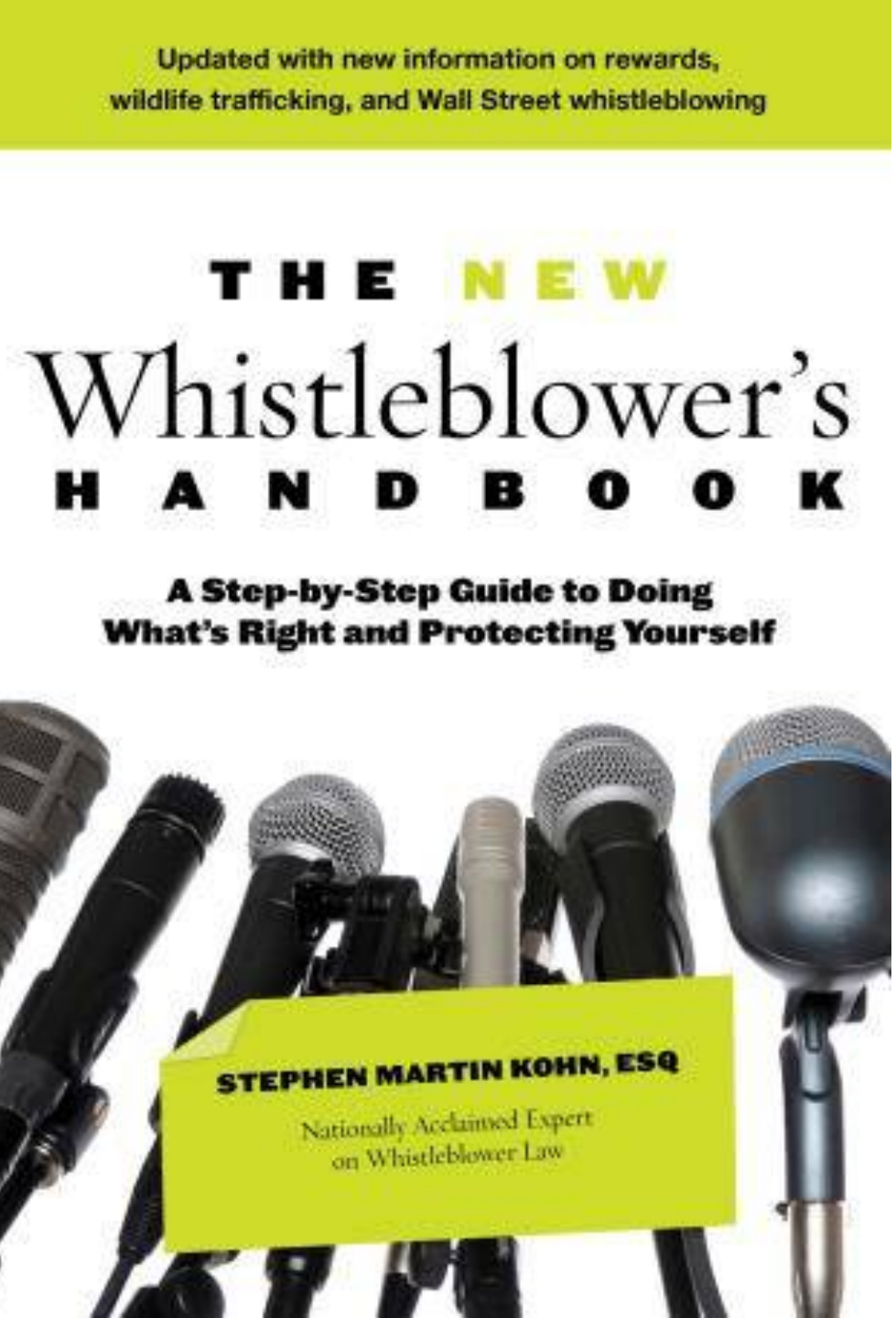
Proposal fails to fully ensure that whistleblowers can maintain their anonymity or confidentiality.

Proposal Lacks any Incentives for Whistleblowers.

Proposal Fails to address the remedies available to whistleblowers or prohibit the obstruction of justice.

Proposal fails to follow the best practices in the U.S. Dodd-Frank IRS/Banking whistleblower laws.

Source: National Whistleblower Center, Feedback on the Proposal for EU Whistleblower Directive, COM/2018/218 (July 11, 2018)



"You may want to add this book to your… wish list. Just don't let your boss catch you reading it."

–Wall Street Journal

Links to the legal authorities including statutes, regulations, and cases relied upon in The Handbook can be found online, including:

- *New Legal Tools: Rule 1*
- *False Claims Act / Qui Tam: Rule 6*
- *Tax Whistleblowers: Rule 7*
- *Foreign Corrupt Practices Act: Rule 9*
- *Non-Disclosure Agreements: Rule 28*
- *International Whistleblowing: International Toolkit*

Stephen M. Kohn
Founding Director, National Whistleblower Center
Partner, Kohn, Kohn & Colapinto, LLP

Stephen M. Kohn, a partner in the law firm of Kohn, Kohn & Colapinto and a founding director of the National Whistleblower Center, has represented whistleblowers since 1984, successfully setting numerous precedents that have helped define modern whistleblower law. He currently represents whistleblowers at major international financial institutions, including the Danske Bank manager who reported a massive multi-billion dollar money laundering scheme. He obtained the largest reward ever paid to an individual whistleblower ($104 million for exposing illegal offshore bank accounts) and is widely recognized as the leading U.S. authority on whistleblower laws. Mr. Kohn is the most published author on whistleblower law, including The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself.

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Connect with the NWC

@NationalWhistleblowerCenter

@StopFraud

National Whistleblower Center

www.whistleblowersblog.org | www.whistleblowers.org

Sources

Statutes

- False Claims Act | 31 U.S.C. § 3729-3732
- Internal Revenue Code | 26 U.S.C. § 7623
- Securities Exchange Act | 15 U.S.C. § 78u-6
- Commodity Exchange Act | 7 U.S.C. § 26

Statements from Officials

- Alexander Dyck, et al., "Who Blows the Whistle on Corporate Fraud?" The University of Chicago Booth School of Business Working Paper No. 08-22 (2009).
- Bill Baer - Remarks at American Bar Association's 11th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2016)
- Chad A. Readler, Department of Justice, Civil Division, in press release titled, "Justice Department Recovers Over $3.7 Billion From False Claims Act Cases in Fiscal Year 2017" (December 2017).
- Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the Video --- Read the Speech
- Christopher Ehrman, Director of the CFTC's Whistleblower Office, Press Release "CFTC Announces Multiple Whistleblower Awards Totaling More than $45 Million"
- Eric Holder, U.S. Department of Justice, remarks at the 25th anniversary of the False Claims Act (January 31, 2012).

Statements from Officials, cont.

- John A. Koskinen, Commissioner of the IRS, Remarks before the U.S. Council for International Business-OECD International Tax Conference
- Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, Order Determining Whistleblower Award Claim
- Mary Jo White, Securities and Exchange Commission, Remarks at the Securities Enforcement Forum, Washington DC (October 2013)
- Stuart Delery - Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014) and U.S. Department of Justice, remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (June 5, 2014).

Reports and other Laws

- Alexander Dyck, et al., "Who Blows the Whistle on Corporate Fraud?" The University of Chicago Booth School of Business Working Paper No. 08-22 (2009).
- Federal Obstruction of Justice, 18 U.S.C. §1513
- SEC Enforcement Action on NDAs, *In re KBR*.
- Report Published by the National Whistleblower Center: Foreign Corrupt Practices Act: How the Whistleblower Reward Provisions Have Worked

Objections and Suggested Amendments to the Proposed EU Whistleblower Directive

National Whistleblower Center, Feedback on the Proposal for EU Whistleblower, COM/2018/218 (July 11,2018), https://www.whistleblowers.org/storage/docs/nwc%20eu%20whistleblower%20directive%20feedback.pdf

Introductory Statement of Adam Farkas, EBA Executive Director, at the TAX3 Public Hearing

- *European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)*
- *Brussels, 21 November 2018*

Dear Chairman, dear Members of the TAX3 Special Committee,

On behalf of the European Banking Authority, thank you for inviting me to take part in this public hearing. AML/CFT supervision is in the spotlight. High profile AML/CFT scandals are widely reported and Members of the European Parliament as well the Commission have asked the EBA to review the application of EU law in various jurisdictions amidst continuing allegations of breaches by financial institutions of applicable AML/CFT rules. The Financial Action Task Force and MoneyVal, in their Mutual Evaluations, have also raised questions about the adequacy of some competent authorities' approaches to AML/CFT supervision.

Today I would like to update you on our work regarding Breaches of Union Law and also to explain our evolving approach to enhancing AML standards across the EU. This is particularly relevant in the context of the ongoing discussions about potential modifications to the ESAs roles and powers. I wish to highlight that these proposals appear to largely reflect the work we are already doing, but are important as they would confer more appropriate powers and, key for us, resources.

The EBA's role and powers

The EBAs objectives include maintaining the stability and effectiveness of the EU's financial system and promoting sound, effective and consistent regulation and supervision, and work to safeguard the integrity, transparency and orderly functioning of financial markets. To achieve this we have a legal duty to foster the consistent and effective application of the Anti-Money Laundering Directive (AMLD).

The EBA currently has a number of tools at our disposal to achieve our objectives. These range from issuing opinions, recommendations or guidelines to drafting legally binding standards, where this is foreseen by EU legislation. We also work to promote the effective implementation of our standards and EU law through training, peer reviews and facilitating the exchange of best practices, among others. However, our powers to enforce our standards and guidelines are limited: we do not supervise individual financial institutions;

and we do not currently have the legal tools to enforce compliance in a way that would compel a competent authority to change its approach.

Where we become aware of malpractice or suggestions that a competent authority may be in breach of Union law, we do investigate and, should a Breach of Union law be confirmed, issue recommendations. However, these recommendations can only address Breaches of Union law and cannot make up for weak provisions in Union Law and associated weak or ineffective supervisory practices.

BUL update

The EBA has been asked to look into a number of potential Breach of Union Law cases recently, which we have taken forward despite significant resource challenges. We launched a preliminary enquiry in Portugal, which was not taken forward but we identified deficiencies which needed to be remedied. This year we looked at breaches in the FIAU and the MFSA in Malta. In the latter we did not proceed with a formal investigation but listed areas where we would expect to see improvements in practice. In the case of the FIAU we did find a Breach and have issued recommendations to address this, which the Commission has also followed up on. We currently have ongoing preliminary enquiries into Latvia, Denmark and Estonia, the latter two linked to the same issue of an Estonian branch of a Danish bank.

These investigations take significant time for our AML, legal and management teams but we believe are worthwhile and we will continue to use this tool where needed. However, we would prefer to focus our resources in the future on addressing weaknesses ex-ante and working within competent authorities to strengthen their approaches to reduce the occurrences of ML and TF. To that end, we continue to work on our approach to policy development, implementation reviews and training, and risk products.

Ongoing EBA work - Policy development

The EBA, along with EIOPA and ESMA, has been actively working to foster a common approach to risk based AML supervision under AMLD 4 with policy products including:

- Guidelines on AML Risk factors and simplified and enhanced customer due diligence, which provide financial institutions with the tools they need to make informed, risk-based and proportionate decisions on the effective management of ML/TF risk;
- Risk-based supervision guidelines, which set out how competent authorities should assess the ML/TF risk associated with financial institutions and how they should reflect that assessment in their approach to AML/CFT supervision
- An Opinion on innovative solutions for customer due diligence (e.g. non-face-to-face verification of customers' identity; access to central identity documentation repositories) to promote robust and consistent supervisory responses to emerging technology.

We are currently reviewing the Risk Factor Guidelines and will review the GL on the risk-based approach next year to reflect implementation experience and any issues arising from our Joint Opinion on ML/TF risks.

To facilitate effective cooperation and information sharing across the EU we are also developing

- A cooperation agreement (MoU) between ECB and national authorities;
- Own initiative Guidelines on cooperation between AML competent authorities (AML colleges);

The Guidelines clarify practical modalities and set clear expectations that supervisors should cooperate effectively, domestically and on a cross-border basis. They also propose the creation of AML/CFT colleges.

Ongoing EBA work - Implementation

To assist authorities in their effective implementation and practical AML supervision the EBA has drawn up an AML/CFT strategy to review AML/CFT supervision in a number of other Member States. These reviews of national approaches to AML supervision will help to identify weaknesses and best practices in individual jurisdictions and across the EU, allowing us to give early stage feedback to competent authorities. The reviews will also inform the development of policy products and our training offerings, which are an important feature of our ongoing work to foster consistent and robust implementation. In 2018 we have undertaken three major trainings for around 250 EU supervisors and intend to continue the roll out of training to enhance the quality and consistency of supervision across all relevant EU competent authorities.

Risk identification

Every other year the ESAs are responsible for a Joint Opinion on AML risks to the EU financial sector and we are currently finalising our second such joint opinion as an EU wide complement to national risk assessments.

AML work going forward

The EBA currently has 1.8 FTE working on AML, and even with support from national competent authorities and EBA management support, our work can at best make a modest difference. Additional resources are vital to more adequately take forward this work, even under the same structure as at present. However, I also list our current work plan in the context of the various proposals on the table to strengthen AML supervision across the EU. I will focus on the near term proposals in the Commission communication rather than some of the longer term, institutional and legislative, changes being mooted.

The Commission Communication of September 2018 suggested that, inter alia:

- “resources and expertise currently scattered across the three European ESAs be centralised at the EBA”;

- the EBA "receive an explicit mandate to specify the modalities of cooperation and information exchange […]";
- the EBA "carry out periodic independent reviews on anti-money laundering issues" and "report to the EU Council, Commission and Parliament";
- the EBA "become the data-hub on AML supervision in the Union";
- the EBA "carry out a risk assessment exercise to test strategies and resources in the context of the most important emerging AML risks";

The Commission's proposals are welcome, recognising that these will be subject to debate and change. The direction they point to would allow the EBA to more effectively continue our work to improve implementation and coordination with improved resources and legal certainty. In particular, some changes along the lines in the Commission communication would allow the EBA to:

- maintain our high standards of policy products;
- assist in better and more consistent implementation via independent reviews, feedback and training to competent authorities;
- strengthen the EBA's work to foster effective coordination and communication between agencies and jurisdictions;
- strengthen the EU AML risk infrastructure by helping to draw together quantitative and qualitative information at an EU level to complement national risk work.

Conclusion

I see the current steps to improve AML in the EU then as evolutionary rather than revolutionary. As my colleagues have previously told this committee, minimum harmonisation directives mean that national differences will continue to limit how much convergence our guidelines and standards can achieve. Nonetheless, the current proposals to strengthen consistency of implementation, cooperation and information sharing would, if backed by adequate resources, mark a modest but important step forward in improving AML supervision across the EU.