



European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

Brussels, 16 December 2011

EBIC PROPOSALS FOR AMENDMENTS TO THE PROPOSED REVISION OF THE FATF RECOMMENDATIONS DOCUMENT FROM 28 OCTOBER 2011

The European Banking Industry Committee brings together European banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative view of the European financial industry. EBIC has been established by the main banking industry federations: the European Banking Federation (EBF), the European Savings Banks Group (ESBG), the European Association of Cooperative Banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas)/ the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).

EBIC Secretariat, Rue Marie-Thérèse 11, 1000 Brussels, Belgium
Tel: +32 (0) 2 211 11 11 Fax: +32 (0) 2 211 11 99 E-mail: secretariat@eubic.org
or julien.ernoult@eapb.eu (EBIC AML/CFT WG Secretariat)

1. Rec 6. Treatment of foreign and domestic PEPs

Firstly, with regard to Politically Exposed Persons (PEPs) we agree with the notion of the FATF that there is a higher level of risk attached to foreign PEPs and that a risk based approach in the CDD procedures should be taken concerning domestic PEPs.

However, EBIC urges the FATF, while redrafting the PEP provisions, to abstain from introducing provisions that link the PEP issue with that of the Beneficial Owner (BO). Under a Risk Based Approach, the obligation to check Beneficial Owners against PEP lists in each case is not justified. For example even if a PEP owns 25% of a company it does not necessarily mean EDD should be applied to the company's activities. The necessary measures should be applied under a risk based approach. Therefore, the text (page 6, paragraph 6) should be adapted as follows (new text underlined and in italics):

6. *Financial institutions should, in relation to foreign politically exposed persons (whether as customer or beneficial owner), in addition to performing normal due diligence measures:*

a) *Have appropriate risk management systems to determine whether the customer or the beneficial owner is a politically exposed person.*

Further, the requirement to obtain prior approval from senior management for establishing or continuing business relationships with PEPs should be redrafted in a pragmatic manner within the context of the forthcoming review. We therefore suggest replacing passage paragraph 6 b) on page 6 by (new text underlined and in italics)

"obtain approval of senior management or the appropriate level within the management hierarchy (e.g. Compliance Officer) for (...)".

Also, EBIC would like to renew its proposal for the publication of updated PEP lists so that FIs may use it as a substantive tool to discharge their CDD obligations independently of any commercial lists which may not always conform to the qualitative standards of the FATF. If in absence of a high quality public list, credit and financial institutions decide on their own to use the services of commercial providers, a review of the PEP provision should recognise and possibly incorporate such procedures/mechanisms as one of several options for fulfilling the CDD obligation concerning PEPs. A system of public certification of the quality of commercial providers could be put into place for this purpose. To that end EBIC would appreciate if corresponding provisions could be inserted in corresponding guidance.

2. PEPs in international organisations

Furthermore, a complete list of relevant International Organisations should be provided by the FATF and not be limited to the listing of a few examples in the glossary.

3. Family members and close associates

Also, while redrafting the PEP provision with regard to family members and close associates the FATF should give a focussed definition, concerning the relevant degree of family relation and objective criteria to determine close associates. The text (page 6, paragraph 6) should be adapted as follows (new text underlined and in italics):

“The requirements for all types of PEP should also apply to family members or close associates of such PEPs. EDD measures should apply to immediate family members of foreign PEPs (i.e. first degree relatives).”

4. Beneficial ownership

EBIC welcomes the introduction in the revised FATF Recommendations of publicly accessible company registries as sources of information that facilitate identifying the BO and that such registries should also be available to financial institutions to help them comply with CDD requirements (page 26 INR5, last sentence). We would, moreover, appreciate if this could appropriately reflected in the wording of Recommendation 5 (page 6, letter b) as follows (new text underlined and in italics):

a) *Identifying the beneficial owner, and taking reasonable measures on the basis of company registries or other sources to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is.*

EBIC regards the inclusion of harmonized, reliable, transparent, detailed, updated and relevant shareholding as well as BO information concerning non-listed companies in public registries as imperative if credit and financial institutions are expected to discharge their obligations concerning BO identification. EBIC would also welcome provisions which would include formal cooperation and reporting obligations for non-listed companies to timely furnish/submit the relevant information to the public registries and to keep them updated as a result of changes that may occur within the company from time to time.

5. Risk based approach for R.5

EBIC welcomes the clarification of the Risk Based Approach, in particular the recognition of the need to differentiate the extent of measures depending on the level of risk in different situations (page 23, paragraph 12) with a certain customer.

In order to successfully apply the Risk Based Approach on an ongoing basis it is, however, absolutely necessary to optimize, fine-tune and focus the research systems implemented by in the financial institutions for AML/CTF purposes. To that end EBIC regrets that there is no provision for timely, specific and quality feedback from FIUs to reporting entities that have filed a Suspicious Transaction/Activity Report (STRs, SARs) and the latter cannot fine-tune their reporting behavior and research systems.

We would, therefore, welcome the insertion of following paragraph in IN25 (new text underlined and in italics):

“FIUs should provide timely, specific and quality feedback to reporting entities that have filed a Suspicious Transaction/Activity Report (STRs, SARs) so that the latter can fine-tune their reporting behavior and research systems.”

EBIC also notes that the example for an EDD measure for a financial institution (page 31, paragraph 19, 7th example) on *“Requiring the first payment to be carried out through an account in the customer’s name with a bank subject to similar CDD standards”* should be removed and inserted elsewhere, as it only applies to non-face-to-face customer relationships. Alternatively, it could be stated under the list of examples that qualify for SDD.

We have similar concerns with regard to private banking stated as an example for EDD. This type of business is not necessarily high risk, so the example should not be interpreted as being of high risk per se by regulators implementing the Recommendations. We would appreciate further clarification by the FATF in the Interpretative Notes.

Further, in the context of a risk based approach concerning customer risk the FATF should acknowledge that stock exchange rules concerning ad hoc publicity of shareholdings should be equivalent to the suggested disclosure requirements in IN 5, paragraph 16 (a), second bullet point, page 30. We propose following amendment (new text underlined and in italics):

"Public companies listed on a regulated stock exchange and which are subject to regulatory disclosure requirements. Rules concerning ad hoc publicity of shareholdings are deemed equivalent to such disclosure requirements."

6. Other types of legal persons

Concerning legal persons, the concept of "Anstalt" and "foundation" in the draft interpretative note of INR 33 (page 44, paragraph 17) should be clearly defined, as it may refer to different types of legal persons (with different corporate objectives, under public or private law etc.), as these concepts, although similar just in name, might differ from country to country and thereby lead to severe misunderstanding. We, therefore, suggest to remove these two examples altogether.

7. Rec. 4 and 15- Data protection and exchange of information within Financial Groups

EBIC welcomes provisions for financial groups to have group-wide programmes against money-laundering and terrorist financing since they are in line with current practices of many financial institutions. We particularly welcome the principle of policies and procedures for sharing information within the group for the purpose of global risk management. However, the FATF should keep in mind that certain jurisdictions, due to data protection or privacy rules, do not allow an unrestricted sharing of information for this purpose. In this case, financial institutions cannot be obliged by the regulator of one jurisdiction to breach the rules of another. Therefore, it should be a priority for legislators to develop an international regulatory framework that enables group-wide compliance by financial institutions and prevents the rise of home-host conflicts. The FATF should encourage such steps. Recommendation 4 should, therefore, include the following statement (new text underlined and in italics):

"Countries should (...) not inhibit the implementation of FATF Recommendations and establish mechanisms of cooperation to develop an international regulatory framework that enables group-wide compliance by financial institutions and prevents the rise of home-host conflicts."

Correspondingly Recommendation 15 should be amended as follows (new text underlined and in italics):

"Financial institutions should be required to implement programmes against money laundering and terrorist financing. Financial groups should be required to implement group-wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes, provided this is not prohibited by national data protection regulations."

8. SR III and X – Targeted financial sanctions

We welcome the fact that the FATF is focusing efforts to combat proliferation financing on targeted financial sanctions against UN-listed persons and entities. This approach is pragmatic and effective because it is perfectly feasible for banks to freeze assets of clearly and identifiably listed persons and to avoid making funds available to persons listed in such a manner. Moreover, banks totally lack the information they would need for (i) detecting irregularities or suspicious activity patterns in the context of an export control regime or (ii) developing appropriate research tools in this area along the lines of those used for AML/CFT purposes. Against this backdrop, the draft SR III and draft SR X recommendations on targeted financial sanctions against terrorist financing and proliferation financing respectively raise some concerns from the perspective of European banking practice.

First, we think it is not only practically but also legally questionable to require the freezing of assets that are owned or controlled “indirectly” by sanctioned persons (cf. draft SR III, no. p. 60, no. 7a, and draft SR X, p. 82, no. 7a). European banks would prefer an approach under which all such entities and persons have to be listed since banks are not normally in a position to identify unlisted indirect holdings of assets by designated persons. What is more, due legal process, as emphasised elsewhere in the draft SRs and enshrined in EU law, also requires the designation of persons whose assets are to be frozen.

Second, we question the sense of adding, in the draft interpretative note to SR III, a prohibition of “financial or other related services” on top of the prohibition of making funds available to sanctioned parties (cf. draft SR III, p. 60, no. 7b). Basically, financial and related services that do not involve the making available of funds are hardly relevant for the political aim of financial sanctions. We note that no such prohibition is included in either draft SR III itself or the definition of targeted financial sanctions in its interpretative note (i. e. on p. 57, no. 3g). The inclusion of irrelevant services of this kind would, however, require the introduction of very cumbersome legitimisation procedures for very basic banking services, such as responding to questions concerning bonds’ prices or changing a bank note into coins upon request by occasional customers, i.e. persons visiting a bank (or a branch thereof) who may not even hold an account at this bank.

Third, the definition of “those who finance terrorism” in draft SR III (on p. 57, no. 3k) should be limited to persons or entities that have such intention or knowledge. Wording to this effect is contained only in the last sentence of the definition; it should be, but unfortunately is not, included in the definition's first sentence. The first sentence should therefore be rephrased as follows:

“The term those who finance terrorism refers to any person, group, undertaking or other entity that provides or collects, by any means, directly or indirectly, funds or other assets with the intention that they may be used or in the knowledge that they are to be used, in full or...”

Fourth, banks should be allowed to credit any additions to frozen accounts, including incoming transferred funds, as long as these credited amounts are frozen too. The provision in draft SR X (cf. p. 83, no. 11) allows the addition of interest and other earnings due on such accounts or payments due under contracts, agreements or obligations that arose prior to the freeze imposed on the accounts. However, the addition of incoming payments or transferred funds is not addressed in the scope of draft SR X (cf. p. 83, no. 11). We would therefore greatly appreciate it if the addition of incoming payments of transferred funds were included in the scope of SR X. Moreover, as draft SR III does not allow any additions to frozen accounts at all, we suggest inserting a provision (preferably in Section V) similar in

scope to that proposed above for SR X. It makes no sense for any financial sanctions regime to require banks to return payments to (and thereby tip off) the (possibly incriminated) originators of such payments simply because banks are not allowed to add such funds to accounts which they have frozen. Ideally, the draft provision in no. 23 of draft SR X should be expanded and amended to cover any crediting of frozen accounts in both SR X and SR III.

Fifth, we recommend extending the requirement of SR III and SR X (p. 60, no. 7c, and p. 82, no. 7c respectively) according to which designations are to be communicated "immediately" to also cover the de-listing procedures addressed in section V of the draft SRs.

9. SR VII – Electronic Fund Transfers

EBIC welcomes the recognition of the EU as single jurisdiction. EBIC would however like to note that the proposed changes to SRVII to include beneficiary information will increase the burden on financial institutions, including intermediary financial institutions (FI), disproportionately without producing any added value in terms of risk mitigation.

For proper implementation, EBIC would urge the FATF to clarify certain key concepts and terms, such as "accurate"/"accuracy" as well as "full" (page 68, paragraph 9). In particular in the context of intermediary FIs (paragraphs 17-20, page 69) the concept of "all"/"full" information should be removed completely.

EBIC would also welcome clarification on definition and scope of the information accompanying all qualifying EFTs. Therefore Point (c) on page 68 should be clarified as follows (new text underlined):

"originator's address, or national identity number, or customer identification number, or date and place of birth;"

Further EBIC would welcome if FATF provisions concerning the receiving FI's obligation to identify cross border EFT which lack full originator or recipient information (page 70, paragraph 21) with reasonable measures could be aligned with the EU Common Understanding of 2008 issued by CEBS/CEIOPS/CESR (<http://www.eba.europa.eu/getdoc/64c0be05-9e6e-44b5-a8de-da6a2ba6813e/2008-16-10-AMLTF-Common-understanding-on-payment-f.aspx>) of the obligations imposed by EU Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees (paragraph 9, page 5 of the common understanding).

The FATF draft text in paragraph 21 (page 70) should be adapted in line with the aforementioned Common Understanding as follows:

1. A receiving FI should take reasonable measures to identify cross-border EFT which lack full originator or full recipient information. Such measures may include post event random monitoring or real time monitoring where feasible.

We would finally like to note that the current text concerning money or value transfer providers (page 70, p. 24) does not specify that providers are required in the case that they control both, the ordering and receiving sides of an electronic fund transfer, to freeze funds. We would welcome an affirmative clarification of this provision.