



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, 14 September 2011

EBIC'S RESPONSE TO THE SECOND FATF CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS-PREPARATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS

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 welcomes the continued dialogue with the FATF and the opportunity for further comments on the review of the FATF standards in preparation of the 4th round of mutual evaluations.

We appreciate the consideration by the FATF of points raised by our letter from 7 January 2011, such as the need for clarification of Beneficial Ownership (BO) identification and verification requirements, the need for public access points to BO information as well as technical limits to the information verification possibilities in cross border payments. However, EBIC would like to repeat its warning against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide.

Please find here more specific comments on the issues addressed in the Consultation Paper (CP) dated June 2011.

1. Beneficial Ownership: Recommendations 5, 33 and 34

EBIC welcomes the clarifications of the types of measures required to identify and verify Beneficial Owners. There are noticeable improvements in terms of clarity of proposed measures compared to the first consultation document.

It is, however, unclear what the FATF understands by "exercising control by other means" under point 1.1. A range of examples of "other means" could help to clarify. It should also be clarified how to understand "widely dispersed ownership interests". EBIC still believes that for this purpose the 25 % threshold, which nowadays is commonly used as a worldwide standard should be used as a benchmark at FATF level. For financial institutions this threshold is helpful as an objective criterion, thus giving a clearer and appropriate standard concerning control from a company law perspective.

Moreover, the extension of beneficial ownership to "management" structures is impractical. The management has generally a different – more short term/day to day – type of control. This is clearly different from the concept of ownership in a more legal sense as the current understanding is in most countries. The identity of chief executive officers (CEOs) and authorised representatives is often verified and documented on the basis of their role as executive officers. These two different approaches should not be mixed up. Anyway the definitions of "senior management positions" and "the senior managing official" have to be made clearer to be workable.

EBIC also welcomes the considerations of the FATF on mechanisms of access to Beneficial Ownership information. However the FATF should not require financial institutions to serve as formal access points to collect and manage information on beneficial ownership as proposed under point 1.2. (a) or (b). This task should be exclusively assigned to the official register of companies. Difficulties are still encountered by employees to identify the ultimately controlling natural person of a legal person. Such tasks require sophisticated and specialized research. In some jurisdictions legal persons are under no statutory obligation to disclose the natural persons acting on behalf of them (or to register their names into publicly accessible registers). Banks thus have to rely exclusively on the information given to them by the person opening the bank account on behalf of such legal persons.

The most efficient and practical solution would be to grant financial institutions access to public registries which provide reliable shareholding information on non-listed companies. The FATF should encourage jurisdictions to promote company registers that provide the necessary information for BO identification and verification. Issuing harmonised FATF guidelines for the inclusion of relevant and updated information concerning BO in public

registries pursuant to the provisions of the national AML/CFT regimes of FATF member jurisdictions would be extremely helpful for financial institutions in discharging their BO identification obligations.

As to Recommendation 33 the CP (Point 11) proposes exemptions for some select unlisted entities from due diligence requirements such as disclosure of BO information, provided the aforementioned institutions or entities are subject to AML/CFT supervision. Since the exemption under Recommendation 5 applies to publicly listed entities, it is, for the sake of consistency, recommended to extend the exemption under Recommendation 5 to unlisted entities that are subject to high standards of AML/CFT supervision which are comparable to those that apply in case of regulated financial institutions.

2. Data protection and privacy: Recommendation 4

An international understanding on how to implement key AML/CFT and data protection standards, which at the same time takes into consideration certain national specificities, is essential in a globally interconnected economic and financial environment.

Therefore EBIC welcomes the FATF considerations on how to enable financial institutions to properly implement AML/CFT standards while at the same time ensuring full protection of clients' personal data in line with data protection standards. It is indeed crucial for the European banking sector to be able to process data on crime and AML/CFT risks and exchange information in an effective way. We also welcome the reflections of the FATF on how to clarify the mechanisms for international banking groups, which face different national requirements.

A new obligation of authorities, within and between jurisdictions, to have better mechanisms in place to balance the often contradictory targets of AML/CFT on one hand and data protection on the other is a first positive step. However the inability of different authorities to sometimes agree on the appropriate mechanisms and balance between AML/CFT and data protection priorities should not lead to financial institutions finding themselves in legal uncertainty about their specific duties and procedures which is a key issue in their day-to-day activities.

We believe that conditions governing the exchange of data within groups of affiliated companies acting on the same level of data protection should be further harmonised and simplified. Such a framework would be for the benefit of financial institutions and their customers whose data could continue to be processed securely.

3. Group wide compliance programmes: Recommendation 15

The planned requirements for financial groups to have group-wide programmes against money-laundering and terrorist financing 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, regulators should keep in mind that certain jurisdictions do not allow an unlimited 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.

4. Special Recommendation 7: Transparency of cross border wire transfers

From a European banking and payments perspective we wish to reemphasise that the EU must be clearly recognized as a single jurisdiction as stated in the para. 11 of the Basel Committees guidance dated May 2009. This is of fundamental importance and is one of the defining features of the European Union. In particular the FATF should take note of the fact that the European financial sector has taken substantial steps to establish Single Euro Payments Area (SEPA) which will be fully operational by 2014 and will then account for the bulk of EU payments (based on a EU-Regulation on SEPA). SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned.

Therefore amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) should avoid an overly detailed approach and should focus more on general principles.

Current payment industry standards generally require the ordering bank to include the beneficiary account number (but not the beneficiary name) in domestic or SEPA payments (single jurisdiction). However, for international transfers standards require at a minimum the beneficiary name, the bank identifier (BIC) or other identifiers and only where available, the account number, to execute a transfer. Those differences according to the domestic or international character of a transfer have to be taken into account in order to avoid jeopardising the efficiency of a system which has been developed over several decades.

Moreover, requiring additional beneficiary information appears quite difficult from a practical point of view. The proportionality and usefulness – with regard to the purpose envisaged by some members of the FATF – of requiring further information on the beneficiary is also questioned. Finally, we believe that requiring additional beneficiary information is not an efficient contribution to the prevention/detection of money laundering and terrorist financing. It will only lead to additional costs, without any real benefits.

In the same context, we like to stress that is important that banks are not required to verify the content of the information accompanying the transfers as it would just be impossible for them to apply such a requirement.

We welcome the statement of the FATF that one should not require financial institutions (FIs) to verify the identity of parties to a transaction who are not their customer. In particular, intermediary FIs are not able to verify the identity of either the originator or beneficiary.

5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

European financial institutions are fully committed to the fight against terrorist and proliferation financing and already apply existing regulations implementing UNSCRs which contain provisions in case of failure to comply. The proposed changes with regard to more explicit measures against terrorism financing to Special Recommendation III are therefore not considered as necessary.

With regard to the extension of FATF requirements to proliferation financing European banks regard an entity-based approach (checking lists of natural and legal persons) as the only

feasible and cost-effective option when it comes to combating proliferation financing. Measures against proliferation financing are indeed already foreseen in the UN framework. However, the general reference to, or requirement of, "vigilance" in many proliferation-relevant UNSCRs is not helpful and has led to implementation difficulties for financial institutions. General vigilance is impossible to implement for financial institutions. It must be explained exactly to the credit institutions under which conditions and concerning whom exactly they would have to exercise vigilance. Any new FATF requirements "similar" to targeted financial sanctions should take this into consideration.

We would also like to stress again that the information provided for the purpose of freezing funds to financial institutions must be "actionable" and that mechanisms must be in place, including judicial procedures, to avoid financial institutions being drawn into unnecessary discussions with their customers. The FATF should also make sure that FIs will not incur any civil or criminal liability while assisting the authorities in the combating of proliferation financing.

Moreover lists of entities should not only contain sufficient information to allow clear identification beyond any doubt, but should be provided in standard data formats in order to avoid any bureaucratic burden and the risk of incorrect spelling.

As regards the input the FATF is seeking on banks' ability to check cross-border electronic funds transfers for completeness and meaningfulness of data we observe that straight-through processing of mass transactions generally does not allow for such checks. On the other hand, screening of cross-border payments for beneficiaries' names under sanctions rules is performed without any threshold.

6. The Financial Intelligence Unit: Recommendation 26

EBIC welcomes any initiatives that improve the conditions in which Financial Intelligence Units can carry out their tasks. In this context, we would also like to stress that financial institutions, as reporting entities, welcome meaningful, regular and useful feedback from their respective FIUs in response to Suspicious Transactions Reports or Suspicious Activity Reports they are required to file. Effective and timely feedback is indeed valuable for financial institutions to help identifying priorities and shaping an appropriate risk-based approach within the banking sector.

7. Other issues: Recommendation 6: Politically Exposed Persons

EBIC welcomes further clarification related to the requirements with respect to family members and close associates of Politically Exposed Persons (PEPs).

While EBIC understands the risk that may be associated with individuals with responsibilities in international organisations, the proposal to extend the definition of PEPs to individuals carrying out "prominent" functions for international organisations will lead to new implementation questions for financial institutions. For proper implementation the FATF should provide an official list of International Organisations as well as a list of the types of functions that are considered "prominent".

EBIC considers that public authorities should be able to provide lists of Politically Exposed Persons to reporting entities.
