



## European Banking Industry Committee

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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)

Basel Committee on Banking Supervision  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland

Brussels, 23 September 2008

### **Consultative Document: Due Diligence and Transparency Regarding Cover Payment Messages Relating to Cross-Border Wire Transfers**

Dear Madam, Dear Sir,

The European Banking Industry Committee welcomes the opportunity to comment on the consultative document of the Basel Committee on due diligence and transparency regarding cover payment messages related to cross-border wire transfers. Moreover, we are supportive of the comments made in the letter of the European Payments Council from 23 September 2008 and would like to stress the concerns raised with regard to screening/monitoring related aspects of the consultative document.

To start with, we believe that the exact purpose of the paper is not completely clear. While the declared focus of the paper is on the perceived inadequacy of the content of cover payment messages, we in fact find many major paragraphs referring to the application of financial sanctions and the corresponding monitoring process. For the sake of clarity and in order to avoid potential confusion as well as duplication of existing compliance procedures in banks we propose to make a clear-cut distinction in the document between measures belonging to the financial sanctions regime and those within the purview of the anti-money laundering regime.

Furthermore, we would like to draw your attention to some general concerns we have with the document, especially with regard to the screening/monitoring process. At the outset, we would like to highlight the fact that the document lacks information on the envisaged date of implementation of the recommendations made in it. It must be emphasized that no



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further monitoring requirements should be postulated before the new SWIFT message format is available and before banks have had sufficient time to make the necessary adjustments to their IT systems and processes.

More generally, the responsibilities placed on intermediary banks in the payment chain appear to be excessive and the paper needs to acknowledge that intermediary banks have different roles in sequential and cover payments. Furthermore, we are of the opinion that the intermediary should be considered compliant as long as other banks along the payment transfer chain to the beneficiary bank are screening the payments against the respective sanction lists in their country/jurisdiction. This is especially true since the cover intermediary bank has no knowledge about the customer or the purpose of the transaction and it can never conclude that it is a suspicious transaction. Simple names on a list do not state enough facts to conclude if the person sending and/or receiving the payment is actually the person referred to on the sanctions list. Therefore the cover intermediary bank in a payment chain should be asked only to monitor whether the required beneficiary fields are blank or not and cooperate in case of further requests on information pursuant to the provisions of FATF Special Recommendation (SR) VII.

Against this background we would also like to present the following comments concerning some of the specific issues raised in the document:

Firstly, payment messaging systems do not allow mandatory data fields to be blank and will reject payments with an empty mandatory field even before they reach the next bank in the payment chain. Therefore, there is no need to impose this requirement on cover intermediary banks (as postulated in Paragraph 19).

Secondly, we would also like to make it clear that it is very difficult for cover intermediary banks to determine if the information provided in course of a transaction within the payment chain is unclear or incomplete (see paragraph 20). This is largely due to the fact that the information may originate from a country with a different language or different cultural background/customs and therefore does not allow other banks that are involved in the payment chain to judge whether information is unclear, incomplete or meaningless (e.g. address data). Moreover, the paragraph does not seem to take into account that transfers of funds within the European Union may be accompanied only by the account number of the payer or a unique identifier (cf. Article 6 of Regulation 1781/2006 which transposes FATF-SR VII into Community Law).



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Thirdly the ex-post monitoring requirement envisaged by paragraph 20 goes far beyond the demands which banks currently have to fulfil while implementing FATF-SR VII. It is unrealistic to expect the intermediary bank detecting the incompleteness of information and we, therefore, doubt whether it would be technically possible to implement such a requirement at justifiable cost. In addition it is not clear what the bank should do about the actual payment order, since it would already have settled the payment before its ex-post check.

Equally troubling is the fact that cover intermediary banks have – as acknowledged in paragraph 21 – no access to data on the originator or beneficiary nor information on the underlying transaction. It is therefore unrealistic to expect intermediary banks to be able to identify patterns of suspicious activity. Moreover, any attempt to establish effective ex-post monitoring or payment pattern identification procedures – as suggested by the Basel Committee – would be utterly futile due to the fact that the process governing international transfers of funds through intermediary banks within the payment chain:

- is entirely market driven<sup>\*)</sup> and
- does not follow any fixed or specific trade, geographic or political patterns, thus barring the approach to conduct any meaningful analysis.

EBIC is also concerned about the assumption contained in paragraph 22 of the document that sanction controls are not risk-based. It is clear that freezing requirements have to be very strict and should not leave any room for judgement once it has been clearly established that certain funds maintained at a bank belong to a person identified as a targeted/listed person. However, the Risk Based Approach has to be necessarily applied at an earlier stage in order to ascertain and subsequently establish whether the identified funds really belong to the listed persons/customers.

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<sup>\*)</sup> Within this market driven process the overriding and therefore most important criteria according to which funds are internationally transferred from an originator to a beneficiary through intermediary banks are speed, reliability and cost-effectiveness. Therefore originator banks flexibly use a range of alternately available intermediary banks (which in turn may employ various other intermediary banks) to deliver the funds to beneficiary banks.



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We would thank the Basel Committee in advance for taking the comments of the European banking industry into consideration in the upcoming consultative process and remain at your entire disposal to this effect.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'G. Zadra'.

Giuseppe Zadra

EBIC Chair

A handwritten signature in black ink, appearing to read 'Udo Witte'.

Udo Witte

Chair EBIC Working Group  
Anti-Money Laundering