



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)

Mr Paul Vlaanderen
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Financial Action Task Force (FATF)

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EBIC comments on potential FATF initiatives in the area of proliferation financing

Dear Mr Vlaanderen,

The European Banking Industry Committee (EBIC), an advisory committee regularly called on by European institutions and international organisations to provide expertise in the field of financial services and ensure comprehensive consultation with all representatives of the European banking sector on relevant issues, would first of all like to thank you for organising a dialogue meeting with representatives of the banking sector on 30 September 2009. We very much welcome the opportunity to intensify the discussion on potential initiatives of the Financial Action Task Force (FATF) in the area of anti-proliferation-financing requirements for credit institutions.

Ahead of the meeting we would like to restate our concerns about plans of the FATF which could create burdensome, superfluous and ineffective checking requirements for banks which, in turn, would adversely effect their trade financing, delay business transactions and severely hamper European export business and international trade. We would like to draw your attention to the fact that in many countries effective, preventive export controls already exist, supported by concerted action by exporters, export control authorities, customs authorities and intelligence services. Credit institutions, in the vast majority of cases, are only involved in handling financial transactions associated with the export of goods and in credit checks; they have no direct knowledge of the underlying business transaction on which the focus of interest lies when it comes to the threat of proliferation. This means that credit institutions have only limited insight into the underlying business transaction and, the nature of the goods and end-users. May we also refer, in this connection, to the letter of April 2009 from EBIC and BusinessEurope to the FATF Secretariat on this issue.

If any information at all is available to credit institutions handling financial transactions associated with the export of goods, it is based on details provided by the parties to the underlying business transaction or on export control authority certificates/declarations. To comply with existing legal provisions, export companies have invested heavily in both export control management systems of their own and in employee training. With this in mind, it is the European export sector and banking industry's view that it would be inappropriate and disproportionate to require credit institutions to apply checks or due diligence to certain transactions in order to identify the underlying goods.

Where documents available to credit institutions contain information about the goods, it is usually so abstract that it allows no conclusions to be drawn as to whether the goods are being exported illegally or require an export authorisation. Nor can such limited and general information be checked against a prescribed list of goods. If, for example, "spare parts" are mentioned, a credit institution cannot tell whether a proliferation-relevant transaction is involved. Even if the goods are further specified, only technical experts can assess whether it might be possible to misuse them for prohibited proliferation activities. It is the export control authorities, not the credit institutions involved, which possess this technical expertise. In countries with effective export controls, the inclusion of lists or declarations of manufacturers of sensitive goods in credit institutions' customer due diligence would be asking far too much of the banking industry and would also place exporters in general, who are overwhelmingly law-abiding and trustworthy, under suspicion, while failing to capture the proliferators deliberately breaking the law. Such general suspicion would prevent a focussed approach. Instead, banks might feel obliged to request, as a standard procedure for all cases where it cannot be excluded that the goods may be sensitive, formal declarations from customers or export control authorities regarding the intended purpose of the goods and compliance with existing export restrictions. In short, such activity- and goods-related requirements for credit institutions would lead to unnecessary duplication of procedures and inefficiency (massive over-reporting and/or queries by credit institutions to export control authorities), without significantly contributing to the fight against proliferation. Only the export control authorities, with their powers of control and investigation, have the legal and practical means to reliably assess the legality of an export of goods.

The idea expressed in Annex 1 of the FATF Proliferation Financing Report of 18 June 2008 that credit institutions should identify proliferation-relevant activities using red flag indicators would only lead to requirements that would completely overburden the banking industry. Because they lack information on the transaction underlying a payment and its background, credit institutions are in no position to check such indicators. What is more, the indicators set out in Annex 1 are worded too generally to identify proliferation relevant activities. Financial transactions with a proliferation background will normally not differ structurally from those with a legitimate one. Consequently, there are no indicators which enable credit institutions to distinguish financial transactions with a potential proliferation background from other, legitimate transactions.

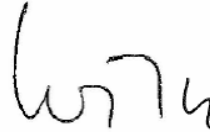
To combat the threat of proliferation effectively and avoid unnecessary costs and delays in foreign trade, only the discussions on the entity-based approach should be pursued further at FATF level. Under this approach, credit institutions would be able to check information on individuals or companies involved in proliferation by accessing an electronic database (via a protected website if confidentiality is required) along the lines of the European Commission's consolidated electronic list of financial sanctions.

We welcome very much the opportunity to discuss our proposals with you in the near future and remain at your disposal for any further information you may require.

Yours sincerely,



Karl-Peter SCHACKMANN-FALLIS
EBIC Chair



Udo WITTE
EBIC AML Working Group Chair

cc: Mr Philippe Pellé, European Commission (DG MARKT)
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