



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)

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EBiC Position on the Commission's working paper in relation to the third EU Anti-Money Laundering Directive

The European Banking Industry Committee (EBiC) welcomes the Commission's consultation on possible implementing measures for the third Anti-Money Laundering Directive. It remains important that all stakeholders, especially those applying the Anti-money Laundering Directive, are actively involved in the shaping of implementing measures in this area – as provided for in the Directive.

In this regard, EBiC which is the co-operation of the main European banking associations with the mandate to provide advice and to ensure a representative and coordinated industry view throughout the process of drafting, adopting, implementing and enforcing EU-financial legislation, would like to make the following comments based on the practical experience of its members.

I. General Remarks

EBiC supports further guidance on the application of the risk-based approach as outlined in the working paper. However, the principle of "risk-based approach" requires flexibility and room for manoeuvre for its application by credit institutions. In this respect, the intention of the Commission to introduce too detailed and cumulative list of criteria, would impede a proper application of this principle. For instance, the very descriptive and cumulative sets of criteria to be applied in cases of exemption seems overly-cumbersome and do not fit with the needed flexibility of the risk based approach. Therefore, EBiC calls to the Commission to intensively discuss this case-by-case approach with Member States and to comply with its better regulation approach in this field. The Commission should ensure that its implementing measures meet the following requirements:

- to provide the needed flexibility for applying the risk-based approach
- to provide the essential clarity and legal certainty
- to avoid any over-regulation and red-tape that would thwart an efficient fight against money laundering.

II. Specific comments

3. SIMPLIFIED CUSTOMER DUE DILIGENCE (CDD)

3.1. General considerations on CDD: simplified vs. normal CDD; the risk based approach.

Question 1 a) : Would the application of the risk based approach in connection with normal CDD procedures be in your view enough for institutions and persons covered by the directive to deal normally with the low risk situations?

The application of the risk based approach in connection with normal CDD procedures – if correctly applied – could be enough to deal with low risk situation. Simplified CDD could facilitate this but it depends of several factors.

It must be clear that in “simplified CDD” procedures, the CDD requirements are limited, but they certainly do not disappear. First of all, the institutions and persons covered by the directive shall in any case gather sufficient information to establish if the customer qualifies for an exemption according to Article 11(1) or (2). Secondly, in accordance with Article 7(c), CDD measures should be applied “when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold”. Furthermore, institutions and persons should pay special attention to any activity which they regard as particular likely, by its nature, to be related to money laundering or terrorist financing (cf. Article 20). In addition, Articles 22 and 24 require institutions and persons to inform the relevant authorities of suspected transactions and to refrain from carrying out suspected transactions. Moreover, it should be noted that the combined application of these provisions implies the need to continuously monitor the business relation, at least to a certain extent. This means that Simplified Customer Due Diligence is not that simple as it seems to be.

In addition to this it should be noted that the system, as introduced by the Directive is primarily focused on the client. This can lead to huge efforts and costs in low risk products that are available in the retail market. The Directive imposes CDD-procedures on all types of clients. This means, that for all products, banks must establish whether the client might be (or have become) a politically exposed person. For all clients it must be established whether there is a beneficial owner. In the mass-market of current accounts and savings accounts banks have huge numbers of clients and accounts. The report “Customer Due Diligence for Banks’ (Basel Committee of Banking Supervision, October 2001) points out, that CDD-policies of banks merely require the most basic account-opening requirements on a working individual with a small account balance. We need to seriously tackle this challenge and find appropriate solutions in order to have effective AML policies in place while respecting the legal framework.

The conclusion therefore is that, although it is helpful to earmark certain clients, products or transactions as low risk, financial institutions must always be able to identify risks as soon as they appear and to implement appropriate measures. In this view a risk based approach in connection with normal CDD procedures will be the best way to enable the financial institutions to deal with the risks. Therefore, a risk based approach should allow to tackle these situations appropriately - otherwise simplified CDD should apply to specific group of product/transactions or customers. In all cases, different implementing measures in different countries will complicate matters and disturb the level playing field.

Question 1 b)

If a case-by-case approach implying the need to adopt implementing measures is followed, would the practical application of the directive rules be more difficult for the institutions and persons covered by the directive?

What would be, in your view, the costs and benefits of both approaches?

The relevance of identifying cases which qualify for simplified CDD (case by case approach) largely depends of the national implementations of the normal CDD procedures (cf. Article 8 of the Anti-Money Laundering Directive).

In the spirit of the risk-based approach, credit institutions should be able to apply the normal CDD procedures with some room for manoeuvre. Indeed, credit institutions should apply the normal CDD procedures in a flexible manner depending on the type of customer, business relationship, product or transaction. This approach is also followed by Article 8 Par. 2 of the Anti-Money Laundering Directive¹. If this principle is properly implemented by Member States, there is no need of identifying further cases of simplified CDD; credit institutions would already be able to apply appropriate CDD procedures taking into account the low risk situation. However, should the national implementations of Art. 8 Par. 3 only allow limited room for manoeuvre, then it becomes crucial to work out all cases which would justify simplified CDD since this would be the only mean to avoid needless red tape. One must therefore consider in which manner the provisions on normal CDD procedures are implemented at national level, in order to assess the necessity of simplified CDD.

Should there be a real need to determine further cases of simplified CDD, we would rather prefer to identify only a limited number of cases representing a low risk. In our view, the list of “technical criteria” should be sufficiently clear and unambiguous in order to be easily applied by credit institutions. At the same time, this list of technical criteria should also be general enough so that it can encompass all the specific national and legal situations. Since these divergent objectives are difficult to be met, we would recommend to define at this stage only a limited number of low risk cases and to test their practicability. As we firmly believe in the risk-based approach – leaving the necessary room for manoeuvre to credit institutions according to Art. 8 Par. 2 - we do not support the establishment of an overly detailed and long list of cases representing low risks. This would undoubtedly limit the flexibility offered by the risk based approach.

In all cases, the identification of simplified CDD cases by credit institutions should be simple and self-evident. One must bear in mind that simplified CDD procedures were introduced in order to avoid that credit institutions spend too much time and resources on cases which do not justify it. In doing so, credit institutions can concentrate their means on situations representing a true or important risk of money laundering. Accordingly, credit institutions should not be left in a position where the resources needed to assess whether a concrete case qualify for simplified CDD would be more extensive than for conducting a normal CDD procedure. Otherwise, the whole process of identifying cases of low money laundering risk would become utterly irrelevant

¹ Article 8 Par. 2: “The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The institutions and persons covered by this Directive shall be able to demonstrate to the competent authorities mentioned in Article 37, including self-regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.”

3.2. Customers

Question 2: Do you agree with these sets of technical criteria? Can you identify other relevant technical criteria? Can you identify any entity which could possibly meet the first set of technical criteria further to the entities already covered by the directive?

Do you prefer having broader (non cumulative) technical criteria? If so, please specify those broader criteria. Please specify as well which checks and balances would justify the application of simplified CDD in those circumstances.

What would be, in your view, the costs and benefits of such criteria?

We broadly agree with these sets of criteria to the extent that the decisive criteria are the proper supervision by public authorities and the registration/disclosure obligations concerning customers' identity. However, we consider that these sets of cumulative criteria are far too detailed. We would prefer a shorter list of cumulative criteria (i.e. public supervision and registration/publicity of the customers' identity) while avoiding less relevant cumulative criteria. This approach nevertheless depends of the national implementation of normal CDD procedures as previously explained. For further explanations on this issue, we refer to our response to question 1.

Regarding the first set of criteria, these criteria are in our view relevant and appropriate – excepting item 6. We do not consider that the criterion of known, stable and impeccable repute of the material source of income is relevant as it is adequately covered by the preceding five items. We would also propose an amendment to criteria 4 of the first set. Indeed Article 11(1) of the Third AML Directive makes clear that a credit or financial institution situated in a third country which imposes equivalent requirements to those of the Directive qualifies for simplified CDD. Accordingly, we feel that the criteria 4 should also explicitly refer to legislation which is equivalent to the obligations of the third AML directive. Thus, Criterion 4 could read as follows:

"The customer is subject to supervision by competent authorities as regards the compliance with the national legislation pursuant to **or equivalent to** the third directive obligations"

Regarding the second set of criteria, we consider that the list is too restrictive. We feel that this exemption should not be limited to "international financial institutions" such as the World Bank or the International Monetary Fund. Indeed, other international / multilateral organisations such as the UN organisations are in a similar risk category than these international financial institutions and should be classified accordingly also as low risk customer.

In all cases, we consider that the technical criteria should be drafted in such a way that the following customers' groups are covered and that credit institutions are entitled to apply simplified CDD in their respect:

- development banks and other public funding agencies which provide credit to customer only through the customers' own bank and which do not maintain any direct business relationship with these customers (e.g. Hausbank-principle).
- so called "transaction banks" which merely convert and process paper documents into electronic data and are acting under a contract with a credit or financial institution without any separate contact to the customers' (cf recital 34 of the Anti-Money Laundering Directive)
- public companies (i.e. public/state owned enterprises) at federal/state level, at sub-national level (i.e. state/regional level), and at local/municipal level which are subject to specific supervision.

- Case of lenders who advance the full premium amount of a credit/lease to an insurance broker (e.g. UK/ Ireland). The borrower/ lessee cannot benefit from money laundering activity because monies are only channelled between the insurer and the lender via the broker/ insurer. Considering criteria of art. 40-1-b of the Directive : Insurance premium funders' customers – the brokers – are governed by the FSA. Insurance premium funders will only deal with brokers who carry an FSA registration; those who do are listed on the FSA web site and they are checked against this to authenticate before they open a broker agency.

One could introduce additional criteria in order let more flexibility in identifying low risk customer group (e.g. pupils in respect of saving activities organised at school).

Question 3: Do you agree with the approach in relation to transparency of legal entities, to beneficial owners of pooled accounts and to the implementation of the domestic public authority exception in respect of simplified customer due diligence?

The approach followed regarding the beneficial owners of **pooled account** seems too restrictive. We would definitely support to apply the simplified CDD procedures foreseen for pooled accounts to additional cases which are similar.

In some countries, the notion of “pooled account” is interpreted very restrictively while other similar accounts held by independent legal professions should benefit from the same rules. This is for instance the case for specific trust accounts held by independent legal profession which are not pooled but which are subject to specific supervision requirements under professional law (i.e. often stricter rules than for classical “pooled” account). In this respect, we would welcome if the Commission could extend the cases of simplified CDD under Art. 11 in order to cover such trust accounts.

Furthermore, Article 11(1) states that no CDD is required if the customer is a credit or financial institution, which is subject to supervision. If this credit or financial institution requires financial services for the benefit of its customers, the simplified CDD does not apply. However, article 11 (2) b point out that if a notary (or similar legal professional) requires services for pooled accounts, the simplified CDD does apply. It is unclear why only notaries get this possibility. We feel that, where a credit, or financial institution, which is subject to adequate banking supervision, requires services for the benefit of its customers, simplified CDD should apply.

Regarding the definition of “**public authority**”, the Commission rightly notes that this notion may be interpreted differently to cover also bodies (including bodies having corporate form) entrusted with public tasks/functions and subject to public accountability. We support this view and consider that the notion of “public authority” does not relate solely to the legal construction but to the function of public tasks exercised under supervision and public accountability. It should at least encompass all bodies and institutions organised under public law (e.g. fire service, state-recognised religious institutions etc.). This matter should not be left to Member States but clarified in at this stage through the implementing measures.

Furthermore, we do not consider the proposed limitation to purely “domestic” authorities as being relevant. Indeed, it is not understandable why only domestic public authorities should be classified as low risk customer. Since the determining factor for this low risk classification is the effective control and supervision exercised on those public authorities, this exemption should be similarly

applicable to all public authorities at least within the European Union and/or within the European Economic Area. Furthermore, the current limitation to domestic authorities may lead to problems for international banks that have domestic public authorities as clients in multiple jurisdictions. This could mean the client could be a high risk client for a branch in a country and, at the same time, be a low risk client for another bank branch in another country. This would be in contradiction with the Basel Consolidated KYC recommendations.

3.3. Products and transactions

Question 4: Do you agree with these criteria? Can you identify other relevant technical criteria? Do you prefer having broader (non cumulative) technical criteria? If so, please specify those broader criteria. Please specify as well which checks and balances would justify the application of simplified CDD in those circumstances. What would be, in your view, the costs and benefits of such criteria?

Question 5: Do you agree with the approach?

The practical use of this exemption will largely depend upon the scope of application of the definition. If the definition of low risk product/transactions is limited, then it will only be of little relevance for credit institutions. Indeed, when entering into a business relationship with a customer requesting a low risk product/transaction, credit institutions cannot be certain that this customer will limit his future activities to the identified low risk products/transactions. Furthermore, credit institutions would be obliged to introduce separate procedures for handling CDD requirements in respect with low risk product and transactions – separate procedures which would be in the long run as consuming as for normal CDD procedures. Credit institutions could therefore only make a limited use of simplified CDD procedures in case of low risk products/transactions. Currently, we feel that the set of cumulative criteria is too restrictive (mainly cash payments at the counter of a bank). We therefore prefer having a broader non-cumulative list of technical criterion.

The relevance of simplified CDD will be different if the definition of low risk product/transactions would be extended. We consider that the technical criteria should be drafted in such a way that the following product/transaction groups are covered by the simplified CDD procedures:

- retail products
- contracts on capital-forming investments
- consumer loans
- loan agreement, in which the loan account is used for loan processing only, and the loan repayment is to be debited from an account opened in the customer's name with a credit institution subject to the Third Directive.
- transactions with associations of flat owners (i.e. in jointly-owned buildings)
- dealing in foreign exchange with own customers
- transactions with companies subject to appropriate supervision by public authorities
- transactions with state-recognised religious institutions
- transactions concerning prepaid cards which represent a similar low risk as E-money transactions (i.e. due to the very limited threshold of money to be used with pre-paid cards)

In respect of the first set of cumulative criteria, we do not support the inclusion of item 3 and 4 (i.e. simple transaction which are conducted at the counter of a credit/financial institution). Most importantly, a similar low risk situation is also present when conducting those “simple” transactions through mobile adviser (e.g. adviser moving to the customers' place of residence) or via the internet.

The set of cumulative criteria should be amended accordingly to cover also these cases. Furthermore, we have the fear that the notion of “simple” financial transaction could be interpreted differently across the EU. Otherwise, we agree with the two sets of technical criteria, whereas we propose to understand the second set as a list of non-cumulative criteria.

4. FINANCIAL ACTIVITY ON AN OCCASIONAL OR LIMITED BASIS

Question 6: Do you agree with these criteria regarding the definition of occasional or very limited financial activity? What would be, in your view, the costs and benefits of such criteria?

We feel that the set of nine cumulative criteria for the definition of occasional or very limited financial activity is very complicated. In our view, this long list of criteria does not allow for the needed clarity in this respect. Again, the integrity of the system created by this Directive must not be undermined by lots of exemptions, based upon different interpretations, in different countries.

Question 7: Do you consider that not all financial activities could be exempted from the scope of application of the Directive? If so, which ones should not be exempted because of the risk of money laundering or terrorist financing?

It would be possible to mention examples of activities that may not be exempted because of money laundering or terrorist financing (e.g. activities relating to NCCT countries), but it would be impossible to draw up an exhaustive list of financial activities.

5. POLITICALLY EXPOSED PERSONS (PEPS)

Question 8: Do you agree with this approach leading to the interpretation of the three main parts of the definition of PEP or do you consider that a close list of categories of persons should be established? What would be, in your view, the costs and benefits of the two options?

EBiC supports the idea of an EU list of Politically Exposed Persons published by the European Commission. Such a list of names should be provided in an appropriate electronic format, similar to the one already provided by the Commission for the application of EU financial sanctions² (e.g. freezing of assets). Indeed, such a list should serve as an official basis in order to provide the necessary legal certainty for banks. It must be noticed that financial and credit institutions having large retail business or payments system need such an electronic list which can be implemented into their IT-Systems: the suggested procedure is the only possible solution for banks to manage the processing of such important data flow with efficiency. Without a clear list of PEPs to be used by credit institutions, the current “clarification” of the PEP-definition would only add complexity and will not be directly applicable by credit institutions.

Any other solution will lead to huge identification problems and costs. In the end this will mean that it will be very difficult for banks to open accounts for clients residing in other countries. This will severely limit the possibility of opening accounts through the internet too.. Finally European banks

² http://www.europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

will have important disadvantages in relation to banks offering similar services from countries outside the EU.

Furthermore we would also like to stress that the PEP definition must meet criteria, but those must be strict and not too broad in order to being able to comply. The broader the scope will be, the more difficult it will be to apply efficient risk-based measures. The discussion concerning prominent public function only makes sense in relation to the original notion of PEP, which is people in power in countries with a considerable level of corruption, who use their function to bring funds abroad. Everyone entrusted with a public function might use his function to embezzle funds or to ask payments for services provided. This is possible on national, regional and local level. In most countries there are checks and balances to ensure these events do not happen. The more limited the definition the better, because that enables credit institutions to concentrate their means on identifiable and risky PEPs.

Question 9: Do you agree with this definition of “prominent public functions”? In the case of persons having held public functions, when, in your view, they no longer should be included in the PEP category? What would be, in your view, the costs and benefits of these options?

The proposed “clarification” of the PEP-definition by the Commission seems not to be very relevant. The group of persons falling under the definition of PEPs is very broad while the outline remains quite vague at the same time. It must be noticed that financial and credit institutions having a large retail business or payments system must rely on IT-systems in order to process all data. Accordingly, they can only apply those provisions on PEPs if they have precise data at their disposal (i.e. list of PEP names and correspondent information). As a consequence, credit institutions would need a concrete and official names’ list of PEPs – not additional complex criteria to assess on an ad-hoc basis whether a person might or might not be considered as a PEP. The intended aim of the PEP provisions (i.e. to concentrate resources on cases representing an important risk of money laundering) would not be achieved since credit institutions would spend most time to document and file paper to demonstrate their ability to distinguish between PEP and non PEP in each situation – especially since it would be the only mean to justify full compliance with the Directive requirements vis-à-vis supervisors, regulators and auditors. On the contrary, clear and direct useable data on PEPs would certainly permit to reach the intended goal of the PEP provisions. Therefore, EBIC urges the Commission to give the banking industry the most practical definition of PEPs in order to provide legal certainty and better implementation efficiency of AML rules.

Moreover, the definition should be clarified so that only PEPs who effectively represent a high risk of money laundering are covered. Indeed, banks should apply the very specific measures described in Article 13 (4) to persons which are entrusted with prominent public functions **and** accumulate additional risk factors/characteristics. Concretely, this means that credit institutions should apply the expected measures where additional evidence, information or sign raise doubts about his integrity and/or activities. This is essential if credit institutions need to exercise effective monitoring of PEPs. Otherwise, credit institutions will have *de facto* to monitor any politician within the European Union which will lead to problematic situations and restrict the access to the credit/financial services, especially in border regions.

The definition should also clarify that **“domestic” PEPs are excluded** from the definition according to Article 13 (4) of the new Anti-Money Laundering Directive.

Regarding the definition of **“public functions”**, this definition remains too far reaching and exceeds the FATF requirements to a large extent. According to the FATF glossary, the definition only covers politically exposed persons from foreign countries (i.e. third countries). Therefore, we strongly advocate to avoid any discrimination between EU PEPs by removing “non domestic EU PEPs” from the scope of the definition. This decision would correspond to the risk-based approach since credit institutions have access to the information regarding domestic and non-domestic EU PEPs and therefore already apply ongoing monitoring procedures to detect suspicious transactions. This is not the case with PEPs of third countries where the very specific and extensive monitoring requirement of the Directive are suited – according to the risk based approach.

With respect to the criteria of **“prominence”**, EBIC urges the Commission to limit the definition to PEPs at national/federal level. We oppose the inclusion of the regional/local level since credit institutions have neither access to the appropriate information at this level nor have the possibility to apply efficient risk-based measures with such a large target group.

Concerning the issue of the timeframe for persons deemed to having held public function, the Commission should not set a precise timeframe but leave this issue to the credit institutions when implementing the risk-based approach. The Commission could at a later stage possibly suggest a more precise timeframe on the basis of accumulated experience.

As far as State own enterprises are concerned, we recommend that only “members of the board” of State owned enterprises be covered by the PEP-definition pursuant to the second bullet point in the section “public functions” on page 13 of the Working Document. This would ensure that banks would have a better identified target group to work with and therefore provide more clarity concerning application.

Question 10: Do you agree with the definition of “immediate family member”? Do you see value in extending the definition of family member to other relatives in the case of PEPs originating from specific world regions? What would be, in your view, the costs and benefits of these options?

Considering the definition of “immediate family members”, EBIC can support the Commission’s definition but we recommend to exclude children in laws (i.e. daughter-in-law, son-in-law...). This definition would represent the maximum circle for this target group. Any further binding extension of the definition would be almost impossible to comply with since credit institutions would not have access to the information. Especially, one should not envisage to enlarge the definition of immediate family members depending of the world’s region or cultural background. A further extension to cover additional relatives could be necessary only in particular cases when specific circumstances justify it – this should in all cases be left to credit institutions when applying the risk-based approach. Nevertheless, the Commission should not underestimate the difficulty to identify this close family relationships when entering into a business relationship with a customer. We also expect some practical problems regarding the identification of “immediate family members” as beneficial owner and therefore supports to apply strictly the Directive’s provision on the identification of major beneficial owner³.

In all cases, it remains essential to clarify that domestic PEPs are in all cases excluded from the PEP definition. Should the EU persists in making a distinction between domestic and non-resident EU

³ see Article 3 (6) of the EU Anti-Money Laundering directive

PEPs, then the Commission should confirm that particular attention needs to be paid to non-residents in applying due diligence proceedings vis respect to PEPs.

Question 11: Do you agree with this definition of “persons known to be close associates of PEPs”? What would be, in your view, the costs and benefits of this option?

The definition of “persons known to be close associates of PEPs” should be focused on the capacity of identifying these persons **as being known** to be close associates. The definition should be amended in this respect in order to better reflect the exact wording of the Directive. Moreover, it should be stressed that the business relationship with these “close” associates should be substantial in order to avoid that any social or economic contact between two persons could be considered as a close relationship.

Question 12: Do you find that these indicators provide a useful basis in evaluating the risk of dealing with PEPs originating from high risk countries as far as corruption is concerned?

The listed indicators for identifying States having a high risk of corruption are helpful. Especially lists provided by international organisations such as the OECD are useful. However, credit institutions should be given the necessary flexibility when relying on these indicators – as suggested by the risk based approach. EBIC would support any guidance provided by the Commission regarding the importance it gives to specific indicators to evaluate the risk of corruption. For instance, referring to the rating published by Transparency international, it could be useful to have indications of the rating level to be considered as relevant for widespread corruption.

Question 13: Do you agree with this approach in relation to the identification of PEPs in concreto?

Any additional guidance by the Commission regarding the identification of PEPs *in concreto* would represent a positive development and can only be supported by credit institutions. Guidelines, list of PEP names, or any valuable indication would be highly appreciated by the credit industry. Especially the application of enhanced CDD to non-resident PEPs will become a true practical challenge.

6. INFORMATION ON CONDITIONS IN THIRD COUNTRIES

Question 14: Do you at this stage wish to provide any relevant information in relation to the application of anti-money laundering/counter-terrorist financing measures by third countries?

EBIC supports the adoption by the EU Commission of a list of third countries which do not impose requirements equivalent to those laid down in the EU Anti-Money Laundering Directive. Such a negative list would certainly facilitate the application of the Directive’s provisions⁴ in respect of third countries having similar AML standards to the ones of the EU. If the desired aim of a level playing field is to be achieved, it is important to have a common list at European level in order to

⁴ Article 11(1) and (2), Article 28(3), (4) and (5), Article 16(1)(b), and Article 31(1) of the EU Anti-Money Laundering Directive

avoid that various Member States apply different criteria in tackling this question. Furthermore, such a list would certainly be of great help in classifying customers' group and correspondent banking relation with third countries according to the risk-based approach. Finally it would represent a positive development with a view to provide more legal certainty and efficiency regarding implementation, while limiting the burden on credit institutions.

In the meantime, the Commission could already publish more precise guidance concerning the technical criteria to be applied for listing those countries. We believe that Art. 40.4 of the Directive forms a solid legal basis for the Commission to provide such criteria. If this article expressly allows the Commission to declare which countries do not meet the requirements laid down, it seems natural that the Commission should be able to establish the criteria that Member States must apply in this regard, or at least lay down what criteria it expects to implement in the future in declaring that a country should not be considered as equivalent to European countries from the viewpoint of its system for preventing money laundering.

If it is accepted that it is right and proper for the Commission to make decisions in this matter, we believe that the approach should be based on certain principles:

- It should solely respond to the system for preventing money laundering in each Member State, and should not extend to other points such as the tax system or the level of co-operation with authorities from other countries in different areas.
- It should be as simple as possible, so that the financial institutions themselves are not forced to run checks or complex assessments to determine what countries can be considered comparable.
- It should allow a smooth, flexible relationship with financial institutions in as many countries as possible.

7. ANY OTHER POSSIBLE IMPLEMENTATION MEASURES

Question 15: Do you see value in clarifying when enhanced CDD should be applicable in respect of corresponding banking relations with central banks and monetary authorities from third countries? Or, should the risk assessment be left to the credit and financial institutions covered by the Directive?

We consider that the risk assessment should be left to credit and financial institutions. However, we share the ECB analysis and feel that there is no reason to apply enhanced (or even normal) CDD in relation to correspondent banking accounts with central banks or monetary authorities from third countries, as long as they are not subject to financial sanctions or designated a NCCT-country.

Question 16: Would you consider necessary to address, at this stage, any other of the possible implementing measures presented in Article 37?

No. We do not consider it necessary to address additional implementing measures at this stage.