European Banking Federation

Ref.:EBF_006016
Brussels, 13 January 2014

EUROPEAN BANKING FEDERATION[1] (EBF) POSITION ON FATF RISK-BASED APPROACH (RBA) PROJECT GROUP QUESTIONS FOR THE PRIVATE SECTOR

The EBF appreciates the possibility to provide input on the Risk-Based Approach Guidance paper of the FATF. Close cooperation between government, supervisors and the financial sector can indeed only lead to better results in the fight against money laundering and terrorist financing.

Use of the 2007 FATF RBA Guidance for the financial sector

1. Please set out if, and if so, how, you used the 2007 FATF RBA Guidance for the financial sector. What did you find useful and what could be improved? In particular, is there anything this Guidance should address that it does not currently address?

The FATF Recommendations and the FATF RBA Guidance are used for reference as well as a guideline when preparing internal guidelines.

We generally feel that the current RBA-guidance already provides us with helpful information that can be used by European financial institutions for their internal risk analyses and procedures. Besides the RBA-guidance of FATF European banks have used other FATF-papers, guidance prepared by national governments, local supervisors, the BIS-papers and implementation guidance made by the National Banking Associations.

A risk based approach is important to enable banks to implement the required measures within their own environment, tailoring them to their risks related to their products, clients, and taking into account their existing systems and measures.

The adaptation of the risk based approach means that both the institution and the supervisors understand and accept that the systems focusses on the real risks: based on a risk analysis the appropriate procedures are defined. The institution should be able to explain these procedures in relation to the perceived risks balancing costs and benefits. This doesn't mean that incidents

[1] ***Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.***

EBF a.i.s.b.l
ETI Registration number: 4722660838-23
Avenue des Arts 56, B-1000 Brussels
+32 (0)2 508 37 11 Phone
+32 (0)2 511 23 28 Fax
www.ebf-fbe.eu

can't occur, and thorough and adequate implementation of a risk based approach, should shield the institution from regulatory measures in the event one incident occurs.

Generic risk factors in the banking sector

2. The most commonly used ML/TF risk categories are customer risk; country or geographic risk; and products, services, transactions or delivery channels risk. How relevant is this classification in the banking sector's context? How relevant is it across all categories of banking lines of business? What new risks have emerged or insights developed, for example in relation to new payment methods or virtual currencies, which would require the introduction of additional or new criteria? Where relevant, please distinguish between risks arising in a money laundering and in a terrorism financing context.

New payment systems developed by banks are not seen as a major new risk as these are implemented in accordance with the procedures that apply for the traditional payment systems.

We have some concerns where new payment systems are developed by parties outside the financial sector, as these parties have less experience with the risks related to money laundering and terrorist financing. Some EBF members highlighted the specific risk/ threat posed by the use of virtual currencies for example bitcoins to fund illegal activity and ML/FT purposes.

3. What are the different types of generic ML/TF risks associated with different types of banking activity (e.g. the risks associated with wealth management will be different from those in retail banking)? How does this impact the implementation of differentiated AML/CFT measures for the different lines of business? Please describe briefly.

In general we feel that the current risk based approach is still adequate. In some aspects we feel that risks might be less than perceived in the guidance. This specifically applies for

- Private banking:

It is difficult to envisage any objective element enabling private banking to be treated as a higher risk factor, apart from the fact that the capital sums involved are large, which is not in itself a specific risk criterion provided that the origin of the funds has been identified. On the contrary, it can be argued that private banking generally presents a lower risk because a private asset management client is perfectly well known to his banker (generally better than an ordinary client) as the banking relationship has been in existence for a long time and the origin of the assets has been verified. It is not private banking as such which should be regarded as a risk factor but rather the lack of knowledge of the origin of the funds or the fact that the funds are related to an uncertain economic activity.

- Transactions conducted at distance :

Even if transactions conducted at a distance may, in some cases, be regarded as more risky it would be difficult to systematically treat transactions which do not imply the physical presence of the parties as presenting a higher level of risk. Transactions conducted at a distance are tending to proliferate in line with the technological developments which allow clients to perform a growing number of operations without visiting a bank counter, including payments made by e-banking, by mobile telephone, etc. It would be unnecessary and counter-productive to automatically require a strengthened verification of such transactions.

Professionals should rather be alerted by the combination of several risk factors, associated with the fact that the transaction was performed remotely.

4. How do banks identify their risks (e.g. use of a risk assessment methodology, tools developed by the banking sector at national level) and how do they identify/define different levels of risk (e.g. high, medium, low).

For the implementation banks have used the guidance indicated above. Further guidance may have been developed at industry level in some countries. Based on these tools each bank has made its own risk analysis.

RBA Experience of the banking sector

5. In your experience, what are the prerequisites for the successful adoption of a RBA by banks? For example, have you been able to refer to guidance published by trade bodies, national authorities or international organisations?

A successful RBA by banks require an understanding of customer risks. The scale of banking transactions require that efforts to combat money laundering are targeted where systems cannot support in the detection of financial crime, based on the knowledge of where the risks are highest. The implementation of internationally harmonized group wide policies in financial institutions is useful but it may be hindered as each financial institution is subject to local, national supervision which does not require or allow local, national supervisory bodies to harmonize interpretation and exercise of FATF recommendations.

6. What are the obstacles? Examples could include the perceived benefits of a more prescriptive or rules based approach, human resource constraints, knowledge gaps, (compliance) cultural issues in banks, an unsupportive legal framework or rules-based supervision. How can they be overcome? Examples could include good practices developed at banks' level or industry-wide initiatives developed at national level, or expected solutions at policy/regulatory level.

The major obstacles are notably:

- Privacy: it is sometimes difficult (or even impossible) to share information between various branches of the bank and apply global consolidated CDD. In addition, specific regulation might apply which hinder the exchange and handling of 'sensitive' information group wide, which includes information on (possible) criminal actions of a client.

- Lack of reliable sources: it is difficult to verify the information against reliable sources. Access to official public information on e.g. place of residence, company shareholders, Beneficial Owners, PEP's would greatly support the effort of the bank.
- ICT: when implementing new measures, organizations and governments should realize that all banking procedure are supported by ICT-systems. It takes a lot of time to fully adapt and implement these systems on new regulations. In general the lead time for ICT changes can be more than 12 months.

Contact:
Sébastien de Brouwer: s.debrouwer@ebf-fbe.eu and Séverine Anciberro: s.anciberro@ebf-fbe.eu