European Federation of Building Societies
Fédération Européenne d'Epargne et de Crédit pour le Logement
Europäische Bausparkassenvereinigung

EFBS Transparency Register No: 33192023937-30

Brussels, 28 July 2020

Position paper in the context of the Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing

The European Federation of Building Societies (EFBS) is an association of specialised credit institutions (Bausparkassen) promoting and supporting the financing of home ownership. The business of the Bausparkassen is regulated by specific national Bausparkassen Acts. In compliance with the strict legal provisions, the Bausparkassen offer contractual savings schemes to their customers and grant them loans which must be secured by mortgage.

We support the EU Commission's efforts to create a more harmonised European regulatory framework for the prevention of money laundering and terrorist financing, while at the same time strengthening the risk-based approach and considering national specificities. In addition to answering the consultation questions, we have some comments on pillar III, IV, V and VII of the Action Plan.

III. DELIVERING A REINFORCED RULEBOOK

In the new EU single rule book, the following topics should be adequately considered:

1. *strengthening of the risk-based approach, taking into account institution- and sector-specific characteristics*

The application of the risk-based approach should lead to the application of simplified due diligence obligations in all fields of combating money laundering, especially for institutions which – like Bausparkassen – supply products with a low money laundering risk. In this connection, it would be expedient for instance to extend the list of products with low money laundering risk, contained in the Annex to the EU Money Laundering Directive, to include financial products with a long-term investment horizon. In this way, the general use of simplified due diligence would be also possible in relation to Bauspar contracts.

2. *focus on individual risk in individual cases instead of blanket normative requirements, especially in the area of increased due diligence*

In the case of politically exposed persons (PEPs) in particular, the existing supervisory regime contains a pronounced amount of general normative specifications with regard to applicable testing

and documentation obligations. Based on the practical experience of our member institutions, a differentiated approach would also be appropriate in these cases.

In the case of a PEP characteristic in a low-risk environment, which – as is the case with Bauspar contracts, for example – is characterised by

- low product risk,
- low transaction volume,
- non-cash transaction,
- execution via a domestic account connection or
- recurring transactions of the same type (e.g. repayment of a loan by direct debit)

will make it possible for the obliged entities to facilitate random sampling or one-off valuations without increasing the risk of money laundering. It should be possible for the obliged entities to design a supervisory framework established for this purpose as part of their risk analysis.

3. free use of the register as beneficial owner by the money laundering obliged entities

In order to ensure that the register of beneficial owners is used more intensively by all obliged entities, it should be free of charge. In our opinion, this is expected to lead to a significant improvement in the data quality of this register.

4. information enhancement of key reporting systems for effective prevention of money laundering

The scope of the information on the beneficial owner recorded in the registers should be of greater benefit to the obliged entities. In order that the obliged entities can also establish a link to their own contractual partners and their own business relationships, we advocate including the following additional information:

- Country of residence
- PEP characteristic and authoritative function (e.g. membership in national parliaments)
- Tax ID according to the bank account register details.

5. independent quality assurance measures by the registering authority

It would be desirable from the perspective of an institution subject to reporting requirements if the authorities keeping the register were to regularly check all the information contained in the register and notify the affected obliged entities of any changes.

6. expanding the information in the central bank account registers

The registry administrator could also maintain and regularly update a personal identification mark, yet to be established, regarding a PEP property in the central national registers of bank accounts.

The same would be conceivable in the case of a customer resident in a high-risk country or in the case of a listing on a sanctions list.

Taking into account our proposal under point 7 below, this measure would create an effective instrument for assessing the risk of the party concerned. The additional information available would trigger new findings among those subject to the obliged entities, which in turn would lead to greater efficiency in the fight against money laundering and terrorism.

7. bi-directional use of the central bank account mechanisms by money laundering obliged entities

Credit institutions are obliged by existing national regulations to make certain account master data available centrally to a designated authority for the purpose of money laundering prevention. The reporting mechanism could in future also be used for the purposes of a reporting component. On the part of the authorities, certain personal data (e.g. PEP characteristics) could in turn be made available to the obliged entities.

On the one hand, this measure would make it possible to draw up the European PEP lists in a very practical manner and, on the other hand, it would eliminate multiple efforts in the individual credit institutions.

8. focusing prevention measures on cash flows, crypto-currencies, in particular the exchange from and to real currencies and cross-border payment flows, in particular transactions leaving or entering the Single Market

In the highly regulated banking environment of the European Single Market, particular attention should be paid to the interfaces with the European financial system. The national risk analyses show that cash continues to be of great importance, especially for money laundering and terrorist financing. The same applies to crypto currencies. In purely quantitative terms, these are not yet very widespread, but in the future, they will spread very rapidly in an increasingly digital world. At the interfaces to the European Financial System, special requirements should therefore apply to the verification and documentation obligations for the obliged entities and authorities in the case of cash and crypto currencies being brought in and out.

The physical transport of large sums of cash across national borders should therefore be better documented and controlled.

9. facilitation for money laundering obliged entities

In daily practice, our member institutions have found that a general and very strict interpretation of the KYC principle in credit institutions leads to the following phenomenon: Within the framework of the regulatory requirements for data updating, credit institutions which are themselves subject to a very strict supervisory regime are additionally surveyed by credit institutions in detail and individually with regard to compliance with the regulatory requirements. This practice leads to considerable additional expense, especially for smaller institutions, but also for special credit institutions operating in a low-risk environment, without any added value in the fight against money laundering.

Especially in the interbank business of the European Single Market and a similarly oriented European supervisory regime, it should in principle also be possible to facilitate the KYC process, taking into account the risk-based approach.

IV. BRINGING ABOUT EU-LEVEL AML/CFT SUPERVISION

Due to the very abstract regulatory requirements for the prevention of money laundering and terrorist financing and the specific issues arising in daily practice, the development of industry standards for obliged entities has proven to be a useful approach. The supervisory authority and obliged entities discuss specific issues arising in daily practice and agree on the necessary interpretations and application requirements. The competence of national supervision should therefore be retained for special credit institutions (e.g. Bausparkassen). In addition, an automatic mechanism should be implemented with the aim of ensuring that the special features defined by supervision at national level lead to synchronous application at EU-level.

V. ESTABLISHING A COORDINATION AND SUPPORT MECHANISM FOR FIUS

In day-to-day banking practice, it is indispensable for the obliged entities to enter into discussions with the credit institution involved in a transaction in order to clarify suspicious transactions. Particularly in the case of transactions within the Single Market, it should be possible for a credit institution commissioned with a transaction to provide the necessary information to a requesting credit institution in the course of a justified investigation of the facts. If such a clarification were provided, the number of transactions which at first glance appear conspicuous (e.g. large special payment in connection with a loan repayment) would be significantly reduced, especially in the case of credit institutions without a house bank function. In this respect, the reporting volume to FIUs would change positively in favor of actual AML or CFT relevance.

VII. STRENGTHENING THE INTERNATIONAL DIMENSION OF THE AML/CFT FRAMEWORK

1. *timely reporting of the EU assessment after submission of FATF revaluations*

In daily banking practice, the monitoring systems and the application systems for customer acceptance consider both the risk assessment of the FATF and of the EU Commission. We welcome the expressed intention to further expand the competence already existing in the EU to identify countries that pose a specific threat to the Union's financial system. In particular, even better dovetailing of the EU in the form of a mandate with the FATF will enable the EU experts to use the FATF's risk reassessment immediately after it is submitted for an update of the EU risk country list.

This would reduce the frequency with which the obliged entities update the application systems concerned. This would also mean that the documents for training staff and the written rules and regulations would have to be adapted less frequently.

2. *focus on transactions from and to high-risk countries; facilitation in cases of demonstrably low risk*

The existing blanket requirement that strict due diligence and documentation obligations apply if a contractual partner is domiciled in a high-risk country listed by the FATF or the EU Commission should be specifically geared to the transaction in question. In daily practice, individuals, although they maintain a residence in a high-risk country (e.g. Iran) for professional or family reasons, carry out transactions from their domestic_bank accounts (e.g. monthly constant savings on a financial product). In these cases, the transaction is therefore not carried out via the financial system of the high-risk country, which has strategic deficiencies. In this respect, shorter verification and documentation obligations would also be conceivable and, taking into account the risk-based approach, would also be appropriate.