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Ref.: AML/HvD/HOL/MBR

Dear Mr President,

Re: FEE Comments on the FATF Consultation “The Review of Standards - Preparation for the 4th Round of Mutual Evaluations”

I am pleased to provide you the comments of FEE on the FATF Consultation Paper “The Review of the standards - Preparation for the 4th Round of Mutual Evaluations”.

FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 European Union (EU) Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

FEE commends the FATF for having put in place a consultation of stakeholders on its proposals to amend the Recommendations through the Consultative Forum. It welcomes the opportunity to provide additional written comments.

Our positions are influenced by the fact that the European Union approved the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, generally referred to as the Third Anti-Money Laundering Directive, that implements and in some instances goes further than the 40+9 FATF Recommendations. In transposing the Directive in their national legislation, some EU Member States already put in place measures that are proposed in the consultation.

We understand that the current review aims at maintaining the necessary stability in the standards while addressing new or emerging threats and any deficiencies or loopholes in the current FATF standards. We also noted in paragraph 3 of the Consultation Paper that further issues will be considered in the year ahead on which further consultation will be organised.

1. The Risk-Based Approach (RBA)

FEE supported the adoption of a Risk-Based Approach (RBA) and contributed to the FATF guidance on RBA for the accounting profession. FEE believes that the standards must remain principles based and avoid recommending rules-based procedures leading to a rarely effective “ticking the box” reaction of Designated Non-Financial Business and Professions (DNFBPs).

Therefore, FEE supports the introduction of a single comprehensive statement on the RBA, which could be incorporated into the FATF Standards as a new Interpretative Note. We would like however to make following observations:

- The general principles set out in the Interpretative Note should be sufficiently clear and precise, especially on definitions so that a consistent implementation is made possible;
- A list of examples can be useful in the Interpretative Note but FATF must be very careful in drafting the text to avoid that this list is misunderstood and interpreted as a rule. Considering the Recommendation as the Standard, it should be limited to setting the principles; examples should not be part of it.
- FATF should consider that solutions applicable to financial institutions are not per se applicable in DNFBPs. In particular, consideration should be given to the different situation of those professions which are not handling money.
- FEE very much agrees with Recommendation 20 which provides that “countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions that pose a money laundering or terrorist financing risk”. We would observe however that the concept of profession is not always very clear. For example, in some countries, accounting (by opposition to auditing) is a non regulated profession or a partly regulated profession. If the entire activity is not covered, this represents a loophole in the system and also to some extent an argument for unfair competition.

2. Recommendation 5 and its Interpretative Note

The main changes proposed relate to the Note and address the clarification of requirements regarding legal persons and arrangements and the definition of customers and beneficial owners.

Introducing more clarity regarding the information that is necessary in such circumstances is certainly supported. However, here again we would like FATF to be as precise as possible on definitions. The concept of “mind and management” of the legal person or arrangement could be clarified.

It would be useful to introduce into the concept of beneficial owners generally, the idea that a class of beneficiaries who may have no control can qualify as a beneficial owner.

FEE welcomes the objective to clarify the measures that would normally be needed to identify and verify the identity of the beneficial owners for legal persons and legal arrangements. Greater emphasis on understanding the ownership and control structure of legal persons and arrangements can be supported. However, it must be clear that there are limits in what accountants or auditors can do to identify the beneficial owner.

In a one-off transaction, it the professional could possibly raise the question with the client and if he is not satisfied with the answer, refuse the business. This is very different when the professional has an ongoing relationship with the client. The professional can provide services to the company without being aware that ultimate beneficial owner of a company has changed. If he has to carry out Customer Due Diligence (CDD) on that issue, there should be some indication on the periodicity of the procedure, even in a RBA.

We appreciate the reference to “reasonable measures”. It must be clear that a professional does not have the investigation powers of criminal authorities to identify the ultimate beneficial owner. This is even more obviously the case in cross-border cases. This situation is not necessarily linked to dispersed ownership but also to a pyramid mechanism or other structures precisely designed to conceal the ultimate beneficial owner.

3. Politically Exposed Persons (PEPs)

The proposal is to widen the category of PEPs to domestic PEPs. However, taking into account the fact that the money laundering risks differ, depending on whether the customer is a foreign or a domestic PEP, the FATF is considering to require financial institutions to take reasonable measures to determine whether a customer is a domestic PEP; and to require enhanced CDD measures for domestic PEPs if there is a higher risk.

FEE underlines that domestic PEPs are already included in the AML legislation in several EU Member States and does not see major difficulties with the proposed evolution.

In our views, all PEPs could be treated in the same way, i.e. there would be a presumption that enhanced CDD would be required whether domestic or foreign, but that the CDD required could be reduced on a justifiable risk appraisal. Care is needed in terms of the reference to when family members are involved, or a close associate, as the approach proposed appears somewhat circular.

4. Third Party Reliance

FEE believes that the sectors on which reliance can be placed safely depends on the maturity of the sector concerning AML and so should be defined country by country in practice. The existence of a supervisory authority able to verify the existence of group policies is an important pre-condition for intra-group reliance.

5. Tax crimes as a predicate offence for money laundering

The FATF is considering including tax crimes as a predicate offence for money laundering in the context of Recommendation 1.

The EU Directive already includes tax crime in the scope of the AML legislation. However, in a survey carried out by FEE in 2008, we observed that the Directive has been transposed very differently among the EU Member States. This results for example in wide variation in the number of reports of suspicious transactions.

FEE believes that, to be effective and supported by those who have to apply them, AML legislations should focus on cases of serious and organised crime. It may sometimes be difficult in practice to clarify a tax treatment as a predicate offence for money laundering. We also recommend being as precise as possible in the definition, especially when related to the scope of the AML measures to be applied by financial institutions and DNFBPs.

6. Other amendments

At this stage, FEE has no comments on other proposed amendments to the 40+9 Recommendations.

For further information on this letter, please contact Ms Petra Weymüller from the FEE Secretariat at +32 2 285 40 75 or via email at petra.weymuller@fee.be.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Hans van Damme', written over a horizontal line.

Hans van Damme
President