

## **Eurofinas and Leaseurope response to the FATF consultation on risk-based approach for the banking sector**

Leaseurope and Eurofinas welcome the opportunity to respond to the consultation by the Financial Action Task Force (FATF) on the risk-based approach (RBA) for the banking sector.

### ***Introductory Observations***

As Federations, Leaseurope and Eurofinas bring together national associations across Europe representing leasing and consumer credit firms. As credit and/or financial institutions, these firms are subject to the anti-money laundering (AML) and counter-terrorist financing (CTF) rules.

Leasing companies and consumer credit providers active in Europe fall within the scope of the 3<sup>rd</sup> Anti-Money Laundering Directive<sup>1</sup> and Commission Directive 2006/70/EC.<sup>2</sup> Where leasing companies and consumer credit providers come under the scope of these rules, three customer due diligence (CDD) scenarios can apply:

1. Regular CDD requirements;
2. Simplified CDD requirements (in situations of little risk when certain provisions under Articles 11 and 12 of the 3<sup>rd</sup> AML Directive, as clarified by its recitals and Articles 3 and 4 of the Implementing Measures, become relevant);
3. Enhanced CDD requirements (in situations, which by their nature can present a higher risk of money laundering or terrorist financing under Article 13 of the 3<sup>rd</sup> AML Directive).

In addition to the above, where there is a suspicion of money laundering or terrorist financing, CDD measures apply, regardless of any derogation or exemptions contained in the 3<sup>rd</sup> AML Directive or its Implementing Measures.

### ***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?*

As a preliminary remark, we would like to comment on the scope of the guidance paper. AML/CTF rules apply to firms regardless of their legal status or structure (for example whether or not the firm in question is part of a banking group). This is specifically the case for non-deposit taking specialised financial institutions such as consumer credit and leasing firms. Against this background, it is essential that the diversity of obliged entities and levels of risk exposures is well taken into account by the FATF. While we agree that general standards developed in the field of AML/CTF should be applicable to the whole banking and financial sector, these ones should also match operational characteristics of the various obliged entities.

We support the work of the FATF on the risk-based approach for the banking sector. However, we are concerned by an increasingly high number of recommendations and guidelines being issued by a variety of policy-makers and supervisory bodies.

<sup>1</sup> Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 25.11.2005, OJEU L 309/15.

<sup>2</sup> Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, 4.8.2006, OJEU L 214/29.

At European level, the recommendations of the Financial Action Task Force (FATF) are integrated into the EU regulatory framework by the 3<sup>rd</sup> Anti-Money Laundering Directive and Implementing Measures<sup>3</sup>. These Directives have in turn been transposed by the various EU Member States into their national law. In line with the 16 February 2012 revised FATF recommendations, the EU is currently reviewing its legislation in this field<sup>4</sup>.

It is important to recognise that all organisations involved in the development of AML/CTF have thus far issued guidance on how general standards should be interpreted or implemented in practice. Given the international nature of the FATF, we believe its guidance should remain general and principle-based. This will allow all other regional/national authorities and/or obliged entities to adjust to local characteristics.

### **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.*

*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.*

*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).*

We believe that the most commonly used AML/CTF risk categories such as country or geographic risk, products, services, transactions or delivery channels risk are appropriate in a banking sector context.

We take the view that product risk category is of particular relevance. For example, the banking industry, supervisory authorities and law enforcement officials have historically considered leasing and consumer credit transactions as posing a lower risk of money laundering compared to most other financial products and services.

The sophisticated application, screening and fraud monitoring systems employed in relation to consumer credit products combined with restrictions on cash payments, cash access and credit balances, make them less effective as a vehicle for money laundering. Leasing is also low risk due to the fact that the lease agreement does not result in the lessee receiving funds. Rather, the lessee receives the usage of an asset e.g. a vehicle or a piece of machinery. Hence the initial leasing transaction is unlikely to be vulnerable to money laundering. In many instances, property of the asset also remains with the lessor.

Another basic reason why leasing and consumer credit transactions show a low risk of money laundering is due to the payment methods used to repay a lease or a consumer credit loan. Generally

<sup>3</sup> Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJEU L 309/15 25.11.2005 and Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, OJEU L 214/29 4.08.2006.

<sup>4</sup> See European Commission's Proposal for a Directive on the prevention and the use of the financial system for the purpose of money laundering and terrorist financing, COM(2013) 45 final

speaking, repayments are debited from a current account at a financial institution subject to the provisions of the 3<sup>rd</sup> AML and its Implementing Measures.

This means that an applicant lessee/borrower has already been identified and customer due diligence (CDD) conducted on him/her by the financial institution holding their current account i) at the time the current account was opened and ii) as part of the financial institution's ongoing security checks. This ensures that when lease/loan repayments are made in the future from a borrower's (usually current) account via a direct debit or standing order, as is commonly the case, the 'paper trail' for the loan repayments cannot be concealed. The origin of these repayments can thus be traced back without difficulty.

When a lessor/consumer credit provider then carries out its own CDD during the lease/credit granting process, this is the second time that those checks are being made on the applicant borrower<sup>5</sup>. This means that a high level of CDD is built into any given lease/consumer credit transaction.

The status of consumer credit and leasing as a low risk transaction is evidenced by the low number of suspicious transaction reports.

In Germany, between 30 June 2002 and 1 January 2007, a survey on suspicious transactions was carried out by the Bankenfachverband, Eurofinas' German member association. During this period, automotive captive banks, corporate and private banks had an average loan portfolio monitored of 7,823,600 credit agreements with private customers and 1,823,600 credit agreements with companies or self-employed persons. Of these 9,647,200 monitored transactions there were only 16 transactions classified as suspicious. 4 out of these 16 reported suspicious transactions regarded fraud against a financial institution and the suspicion for AML purposes was precautionary only. Hence only 0.0001% of these credit agreements studied in Germany over a five and a half year period were held to be suspicious transactions (and even then these were only classified as precautionary for AML purposes).

Additionally, the statistics of the Federal Crime Police Office (BKA) show that there were approximately 36,000 suspicious transaction reports reported between 2006 and 2009. Out of these 36,000 reports filed, only ten of those were leasing related. Hence this further illustrates that leasing is a low risk product for money laundering purposes.

Simple measures such as i) not allowing cash payments, ii) only allowing repayments through bank accounts, iii) excluding payments from banks/financial institutions from specific geographical areas are basic measures to ensure that the leasing/consumer credit transaction isn't vulnerable to ML/TF risks.

### **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?*

*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.*

<sup>5</sup> As explained above, the first time CDD was carried out it was by the applicant borrower's own bank (i.e. the financial institution holding the applicant borrower's current account).

Local guidance on the implementation of AML/CTF rules is critical for the specialised leasing and lending institutions that Leaseurope and Eurofinas represents. This is particularly important for smaller institutions with limited resources.

We would support structured exchanges of best practices amongst obliged entities as well as a better access at national or international level to information on, for example, beneficial owners or politically exposed persons. What may be seen as a basic procedure for a global banking organisation with a diversified business model might be a real challenge for smaller specialised entities.

### **About Leaseurope**

Leaseurope brings together 44 member associations representing the leasing, long term and/or short term automotive rental industries in the 33 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate). It also includes the short term rental of cars, vans and trucks. It is estimated that Leaseurope represents approximately 92% of the European leasing market and in 2012, total new leasing volumes worth €252.6 billion were granted by the firms represented through Leaseurope's members. More info at [www.leaseurope.org](http://www.leaseurope.org)

### **About Eurofinas**

Eurofinas, the European Federation of Finance House Associations, is the voice of consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car, equipment, etc. manufacturers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, education, furniture, electronic appliances, etc. It is estimated that together Eurofinas members granted over 312 billion Euros worth of new loans during 2012. More info at [www.eurofinas.org](http://www.eurofinas.org)

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