



Position on the proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

July 2013

The European Network of Credit Unions broadly welcomes the review of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and is particularly supportive of a reinforced risk-based approach to anti-money laundering (AML) rules. Here below we provide comments on how we believe the application of the AML rules could be further facilitated and compliance cost for small institutions with limited resources minimised.

Credit unions are not-for-profit, member-owned cooperatives which offer credit at affordable rates of interest, saving and, at times, payment and insurance products. Credit unions are governed by a board of members who usually serve on a voluntary basis without receiving any remuneration for the time and resources they dedicate to the credit union. Most credit unions have few staff and many rural credit unions are entirely run by volunteers. Credit unions are limited by national legislation to a defined 'common bond' providing services to members falling within this common bond only (oftentimes including marginalised and disadvantaged people).

1. Risk-based approach

Despite serving people who generally have a low risk profile and who are part of a defined community, credit unions face high administrative burdens due to the existing AML requirements. We are therefore highly supportive of the approach taken by the FATF and the European Commission to introduce a strong risk-based approach and measures to promote financial inclusion of unbanked persons.

Several Member States already have good practices in place such as the UK where people who cannot produce standard documentation shall not be denied access to a bank account "without giving proper consideration to the evidence available"¹. Acceptable evidence can include the Immigration Status Document with Residence Permit for refugees, the IND Application Registration Card for asylum seekers or for prisoners a letter from the governor of the prison, amongst others.

In line with Article 15 of the draft Directive, **we call for the ESAs to develop guidelines on the risk-based approach which are not overly prescriptive and take due account of existing good practices already adopted across the EU** with a view to recognising the relatively limited AML risk profile of many credit unions and their members, credit unions' role in promoting financial inclusion, and their limited resources to comply with extensive AML requirements.

¹ The Joint Money Laundering Steering Group, Prevention of money laundering/ combating terrorist financing – part 1, 14 Dec 2011, available at <http://www.jmlsg.org.uk/industry-guidance/article/guidance>



2. Politically Exposed People (PEP)

Credit unions are concerned that provisions on domestic PEPs under Article 19 of the Commission's proposal will require credit unions to access commercial databases on PEPs. These databases, however, can be prohibitively expensive for credit unions. In its report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (11 April 2012), the European Commission also noted problems concerning the availability, the accuracy and the cost of such databases. To avoid the problems linked to commercial databases, **we would welcome the creation of an EU-wide, free to use, PEPs list and suggest that the production of such a list at EU level should be a prerequisite for implementation of domestic PEP checking.**

3. Reporting and Protection of the Reporter

Credit unions are community-based institutions, with the majority of credit unions having geographic common bonds (i.e. only persons who live and/or work in a specific local area can become members). Credit union volunteers and staff are therefore often well-known locally and are more susceptible to the sort of threats, intimidation and hostile action referred to in Article 37 of Commission's proposal than might be the case for staff in larger financial institutions. Hence, it is crucial to protect the identity of the person reporting a suspicious transaction and the identity of the Money Laundering Reporting Officer (MLRO) at a local level. Therefore, **in order to protect the integrity of the reporting system to prevent money laundering and terrorist financing, we request that the directive fully address the issue of reporter and MLRO protection and confidentiality.**

4. AML and data protection

In some Member States, AML requirements and data protection requirements are set by separate regulatory agencies and these agencies have sometimes taken conflicting positions regarding AML data preservation requirements vis-à-vis data protection requirements. Credit unions in some Member States have been left in the difficult position of being told to keep certain records for AML compliance purpose by the central bank while also being instructed not to retain such records by the data protection authorities. The Article 29 Working Party has noted these inconsistencies². We urge the Commission to address the issue of conflicts between AML requirements and data protection requirements as part of its review of Directive 2005/60/EC. Therefore, **we call for greater communication between AML and DP regulators on issues of conflict and particularly on record keeping and retention and the marrying of Consumer Due Diligence obligations and data protection requirements.**

² Article 29 Data Protection Working Party on Terrorist Finance Tracking System (TFTS) – European Commission Communication COM (2011) 429: http://ec.europa.eu/home-affairs/news/intro/docs/110713/1_EN_ACT_part1_v15.pdf