

Eurofinas and Leaseurope draft response to the BCBS consultation on sound management of risks related to money laundering and financing of terrorism

Leaseurope and Eurofinas welcome the opportunity to respond to the consultation by the Basel Committee on Banking Supervision (BCBS) on its draft guidelines on *sound management of risks related to money laundering and financing of terrorism*.

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.

1. As a preliminary remark, we would like to comment of the scope of the draft guidelines. The BCBS draft guidelines specifically target banks, banking groups and banking supervisors. We appreciate that the scope of the guidelines is consistent with the BCBS prior work in the financial supervisory field. However, we would like to draw your attention to the fact that 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, while taking into account the diversity of obliged entities and levels of risk exposures, the general standards developed in this field can be applied to the whole banking and financial sector.**

2. We support the work of the BCBS on the sound management of AML/CTF risks. However, we are concerned by an increasingly high number of recommendations and guidelines being issued by a variety of policy-makers and supervisory bodies.

At European level, the recommendations of the Financial Action Task Force (FATF) are integrated into the EU regulatory framework by the third Anti-Money Laundering Directive and Implementing Measures¹. 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 field².

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. **We welcome the BCBS efforts to consolidate and rationalise their previous publications on AML/CTF guidance. However, it is also crucial that the BCBS guidelines be consistent with the work already done in this field by other organisations³.**

¹ 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.

² 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

³ Including the guidelines developed by national regulators/supervisory authorities. See for example the UK [Joint Money Laundering Steering Group](#) (JMLSG) guidance.

3. As recognised by the FATF, there are circumstances where the risk of money laundering or terrorist financing is lower. In such circumstances, providing that there has been an adequate risk analysis, financial institutions may be allowed to apply simplified due diligence (SDD) measures. The assessment of lower risk situations is based on customer, product and country risk factors.

The banking industry, supervisory authorities and law enforcement officials have historically considered consumer credit and leasing agreements as posing a lower risk of money laundering compared to most other financial products and services. The application of SDD measures are therefore of key importance for the companies that Leaseurope and Eurofinas represent. **SDD measures are an integral part of a financial institution's risk management system. We feel that this aspect of the guidelines could have been further developed.**

4. As evidenced by the draft guidelines, compliance with AML/CTF rules is resource-intensive. Smaller, independent or specialised firms may simply not be able to comply with these rules without the assistance of third-parties. **We disagree with the BCBS that reliance on a third party in the performance of customer due diligence should be treated *per se* as a potential risk factor.** We would welcome clarification from the BCBS on this point.

5. The draft guidelines touch upon the requirement to identify the Beneficial Owner (BO) and prescribe the use of reliable, independent source documents, data or information in order to verify the BO's identity. **We regret that the BCBS does not offer further elaboration on how identification and verification can be conducted in practice.** Such identification and verification is one of the most complex compliance obligations to adhere to and further detail on how to meet this compliance obligation would be greatly welcomed.

6. Obligated entities should be able to process personal data to allow them to fulfil their AML/CTF purposes. AML/CTF rules may however sometimes conflict with data protection requirements. Experience in practice shows that it is often difficult to be able to process customers' data with legal certainty.

On the one hand, know your customer obligations require the collection of all necessary data to ensure a robust level of knowledge about the customer and their transactions, in order to prevent the business relationship from being misused for money laundering/terrorist financing purposes. On the other hand, collecting information which is adequate, relevant and not excessive for the processing of data on the agreed purpose is an acknowledged principle of protecting customers' data.

This aspect could also have been further developed in the guidelines.

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

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

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