

## EPIF RESPONSE TO CONSULTATION ON ESAS' DRAFT GL ON RISK FACTORS

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### ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

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EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 250 authorised Payment Institutions (PI) and other non-bank payment providers as our members offering services in every part of Europe. EPIF thus represents roughly one third of all authorized Payment Institutions in Europe. <sup>[1]</sup> Our diverse membership includes the broad range of business models including:

- 3-party Card Network Schemes
- Acquirers
- Money Transfer Operators
- FX Payment Providers
- Mobile Payments
- Payment Processing Service Providers
- Card Issuers
- Third Party Providers
- Digital Wallets

We play a constructive role in increasing payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet). It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

## GENERAL COMMENTS

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### Excessive room for interpretation

- **There should be a unified framework for Risk Based Approach (RBA):** A framework containing the areas to be included in an RBA to ensure a level playing field amongst all competing firms. A form of prescriptiveness versus a high-level approach to ensure all firms are guided towards assessing risks without leaving excessive room for ‘interpretation’ which can be used to drive outcomes other than a robust AML / CFT framework by stealth.
- The guidelines set out high level principles for RBA which need to be complemented with sufficient details/examples to minimize the room for interpretation.

### Diversity of business models insufficiently covered

- **The ‘Payment Institutions Industry’ is extremely diverse which needs to be taken into account when formulating an RBA.** Not just in terms of jurisdictions, product and customer types but also in terms of focus and organisation type (e.g. FinTech outfits versus old-style Financial Services outfits derived from past Banking involvement). Diversity can lead to widely divergent RBAs which aren’t necessarily reflective of true risks, with the sole exception of inherent industry risks.
- Innovative payments are not addressed in detail but only through high level principles which as a result confine them into a high risk category. ESAs guidance should introduce how to decrease risk factors through technology.

## SPECIFIC COMMENTS

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### Confusion with the use of “occasional transaction” and applicable regulatory environment of CDD/SDD/EDD

- **Ref: Page 6 (last paragraph) + Page 12 (title II – Assessing and Managing risk – general part paragraph 10 – customer due diligence (CDD) and later in the document e.g. paragraph 138, page 53 (i.e. this is a general comment).**

Several times in the document, the ESA pictures an “occasional transaction” situation to issue CDD / SDD / EDD guidance without making the necessary references to the only situation when such connection is possible i.e. when conditions of article 11 (b), para (i) and (ii) of the 4<sup>th</sup> AMLD apply (15K or 7.5K threshold and 1K Fund Transfers). This confusion may be prejudicial to Money Transfer Operators and should be redressed.

The guidance should define also a “linked transaction” and explain when it will be considered as a cumulative transaction which may trigger CDD depending on the threshold reached.

### Definition of Occasional transactions too vague

- **Ref: Pages 10 and 11 – paragraph 8 bullet point 3.**  
Definition of occasional transaction/business relationship remains vague and then not clearly used to help to understand how to accommodate the CDD/EDD. FATF in its draft guidance is providing examples. We expect ESAs to provide some.

### Customer’s or their beneficial owners’ reputational risk in liaison with alleged terrorist (support) activity

- **Ref: Pages 15 and 16 - Section Customer Risk factors – paragraph 20 first bullet point.**  
The risk factors are too subjective which is dangerous for businesses.

Presently, the description of the (reputational) risk is too vague and too subjective, especially in the context of the recent European attacks that created a situation of general suspicion and allegations in the press. It is more and more difficult for obliged firms to obtain solid information (that can be opposed to a judge if the case goes to court with an accusation of discrimination) from the mass media. Creating a risk factor obligation based on this type of information is counter-productive.

It is not the responsibility of firms neither to take this judgement nor to replace the judge.

Besides, “alleged terrorism” is defined as sensitive personal information in data protection laws, and firms will be prohibited from recording information which is not based on more concrete and specific evidence instead of on reputation or press reports.

Clearer guidance on the sources of credible information is required.

Instead, such risk factor obligation is far more solid if it relies on data sources like the lists of individuals suspected of terrorism acquaintance that some authorities consider disclosing to the private sector e.g. the list of “fiches S individuals” that the French government considers sharing with the financial sector.

#### Suspicious activity report and access to this information

- **Ref: Page 16 – paragraph 20, third bullet point:**  
This risk factor obligation (access to SAR information) should be more detailed to actually become effective. This could only apply to an intra-group working context.

#### PEP and “anyone associated with them” definition

- **Ref: Page 16 – paragraph 20, fourth bullet point:**  
This risk factor obligation (PEP) is valid but the end of the sentence is too vague (“or anyone associated with them may have handled the proceeds from crime”). It is recommended that the usual definitions used to picture the PEP relatives (PEP associates and family relatives) be used instead.

#### Countries and geographic areas

- **Ref: Page 18 – paragraph 23, fifth bullet point:**  
The risk factor “is the jurisdiction stable?” is far too vague and should be deleted.
- **Ref: Page 18 – paragraph 23, fourth and sixth bullet points:**  
Those two bullet points are actually redundant. We suggest deleting the fourth bullet point. The sixth bullet point displays the same information but reconnects it to the FATF mutual evaluation documentation that is the expected, reliable source of information.

- **Ref: Page 18 – paragraph 24 + later in the document the various comments made on the EDD obligations applying to firms entering into a correspondent relationship with a respondent institution from a non EEA-state (e.g. paragraphs 47 and 48, page 24 + paragraph 51, page 25 + paragraph 55, page 26).**

The geographic risk is one factor which should be taken into consideration when determining the level of risk but not the sole indicator. This is here important for ESAs to reiterate that these guidelines RBA do not require the wholesale exiting of entire categories of customers residing in a high risk country and there can always be mitigating factors.

These paragraphs represent a risk to Money Transfer Operators collaborating with aggregators and mobile network operators located in emerging countries, some possibly meeting the definition of higher-risk countries even though those are locally observing strong compliance rules of their group country of origin (low risk country).

#### Simplified Customer Due Diligence and adjusting the quantity of information

- **Ref: Page 23 – paragraph 42, second bullet point.**

Paragraph (i) may create the idea that a CDD process (or sometime even an EDD process) cannot be complied with if one document only is used to verify the identity of a client. In most EU countries, it is a normal practice that the client identify is verified through one piece of ID only, regardless of the due diligence status (SDD, CDD or even EDD) provided that the local law permits it and that the ID used contains all the required information.

Tailoring identity document may be more appropriate to address this.

#### Simplified Customer Due Diligence and adjusting the quality or source of information

- **Ref: Page 23 – paragraph 42, third bullet point, paragraph (ii) + same reference made later in the document e.g. page 51 -paragraph 130, second bullet point 51 + page 52 - paragraph 134.**

Members of EPIF express their support to this point since granting possible SDD opportunities to obliged firms serving clients funding their transactions with scriptural or electronic money. ESA's should clarify that the desired context applies to E-money institutions as well.

## SECTORIAL GUIDELINES FOR CORRESPONDENT BANKS

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### Customer risk factors

- **Ref: Page 33 – paragraph 77, fourth bullet point**

There is the potential that the statement around non-residents could require additional EDD for customers who move jurisdictions. We expect ESAs to clarify what they would expect under these circumstances.

## SECTORIAL GUIDELINES FOR MONEY REMITTERS

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### **Sectoral guidelines for money remitters**

#### Product risk factors

- **Ref: Page 50 – paragraph 129, first bullet point**

High value or unlimited value transactions presently pictured as a factor increasing risk may be moved to paragraph 130 (factor reducing risk) if some monetary limits are set (e.g. EUR 7500). This will deliver the same message in a more positive context.

- **Ref: Page 50 – paragraph 129, second bullet point**

The product or service which has a global reach is considered as indicating high risk. This should be further clarified as global low or high reach.

- **Ref: Page 50 – paragraph 129, last bullet point**

The last bullet point should also be more detailed so that it excludes legitimate situations of consumer networks based on business activities (numerous buyers paying a seller overseas) or family remittance connections (numerous members of the same family spread out throughout Europe sending money to a unique recipient).

#### Customer risk factors

- **Ref: Page 51, paragraph 131, second bullet point**

- **paragraph iii):** We believe the risk applies to situations where banknotes of large denominations only are used for transactions or payment. It does not appear relevant to mention low denomination currencies as well. On a different note, it should also be

reminded that many remittance payouts in Eastern Europe (EEA zone) are permitted in multiple currencies, including in Euro or USD.

- **paragraph v:** Some Money Transfer Operators have products promoting transactions sent to oneself so this situation is not always synonymous of a higher risk factor.
  
- **Ref: Page 52, paragraph 132:**  
The current wording is good but could be improved with an explicit reference to a traditional remittance context i.e. a long-standing consumer whose activity is not suspicious because it meets the traditional standards of the remittance pattern e.g. frequent (monthly) low-value transactions sent to relatives of the same extraction, often located in the country of origin. The objective is in the nuancing: using here the wording consumer instead of customer to avoid the qualification of business relationship.

#### Distribution channel risk factors and Use of agents

- **Ref: Page 52 - paragraph 133, third bullet point, paragraph i + page 54 – paragraph 139, second bullet.**  
The ESA guidance suggests obligations regarding the risk assessment of agents that are difficult to implement in practice. Except if the information is public, it is not possible for a principle to know when an agent i) has contracted with another principal or ii) is possibly offering a service as a principal itself. The contractual environment tying a principal and its agent speaks for the product offered on behalf of that principal only. For the same reasons, a principal will not be allowed to access confidential information on the AML compliance program (“internal controls”) that an agent may have designed (or has received) in the context of another principal’s MT services. There is no sharing of information on these topics for obvious regulatory and contractual confidentiality reasons. With such context in mind, it is unfair and unrealistic to expect that a principal money remitter may design its agent risk-based approach on the basis of non-public information that escapes its control.

#### Country or geographic risk factors

- **Ref: Page 53 - paragraph 135, second bullet point.**  
This bullet is counterproductive since it creates a situation of higher-risk for official money remitters that often represent the last reliable, formal access to financial services. Indeed, the money remittance sector is the primary competitor to Hawala and our industry has a natural and legitimate presence in countries where Hawala is strong. Weighting more risk on these countries for money remitters on the sole risk factor of the Hawala intensity is therefore contradictory with the principles of financial inclusion. This observation does not diminish or

elude though the possibility to weight with more risk a given jurisdiction where Hawala is strong. But it will be for other reasons related to global criteria (e.g. FATF ranking and others).

#### Measures

- **Ref: Page 53 - paragraph 136**  
ESAs should clarify or provide examples regarding the case where the CDD information MVTs hold on the customer is basic or missing.
- **Ref: Page 53 - paragraph 137, third bullet point.**  
This third bullet point picturing the obligation for source of funds and destination of funds establishment should be restricted to a business relationship context only.