



**CCBE RESPONSE TO FATF CONSULTATION PAPER
"THE REVIEW OF THE STANDARDS - PREPARATION FOR
THE 4TH ROUND OF THE MUTUAL EVALUATION,
2ND PUBLIC CONSULTATION" (JUNE 2011)**

CCBE response to FATF consultation paper "The review of the standards - preparation for the 4th round of the mutual evaluation, 2nd public consultation" (June 2011)

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

General remarks

1. The CCBE has used the opportunity to participate in the 1st FATF consultation round on 22 November 2010 in Paris and to submit a response to that first consultation round. The CCBE response has been submitted on 21 January 2011 (appendix 1).
2. The CCBE was disappointed that - until now - it did not receive any feedback on the first CCBE response, although the first FATF consultation paper contains a considerable amount of topics that are especially relevant to the practice of lawyers.
3. This second consultation paper seems much more focussed on the financial institutions and the obligations of Member States to make beneficial owner information accessible to competent authorities and institutions and does not contain any feedback on the first CCBE response either. Such feedback, or at least further discussion, either in a formal or informal framework, on topics referred to in the first consultation paper which are of importance to lawyers, seems important if FATF seriously "*values this input from the private sector and civil society*" as is stated in the foreword of this second consultation paper. At the moment the wordings in which the FATF intends to review the Recommendations have still not been made public or at least shared with the CCBE, yet.¹
4. Therefore, the CCBE would very much appreciate to open further discussion with the FATF as a follow-up of its response to the first consultation paper.

Beneficial ownership: recommendations 5, 33 and 34

5. The obligation to identify the beneficial owner and, if applicable, to verify that identity in a risk-based manner, is one of the most burdensome administrative AML regulations. It takes a lot of time to obtain these data in writing and clients, most of them having no or a low level of ML/TF risk, do not always understand the efforts they have to make to provide the lawyer with the requested data. Two circumstances make this regulation especially burdensome. First of all, the vast majority of services rendered by lawyers do not have any money-laundering risks at all, or at most a low risk level. These clients nevertheless are subject to extensive client due diligence, of which the verification of the identity of the beneficial owner is a substantial element. Furthermore, these CDD measures take time and subsequently prevent the lawyer from rendering his services, as the client mostly wishes, as fast as possible.
6. Therefore, the CCBE would welcome any measure imposed upon authorities that would ease these CDD efforts, provided that the right to privacy and the protection of the stored data are guaranteed as much as possible.
7. The proposed change in recommendation 34 may touch on one of the key principles in the lawyer-client relationship, namely that of legal professional privilege and professional secrecy. Providing authorities with the competence to access information on an identity from, amongst

¹ See CCBE response 21 January 2011, sub 4.

others, lawyers² would clearly interfere with this principle of legal professional privilege and professional secrecy and should therefore be firmly rejected. The importance of a confidential relationship between a lawyer and his client has been established and confirmed by, amongst others, the European Court of Human Rights and the Luxembourg Court of Justice. Therefore, lawyers should at any rate be fully exempt from any obligation to provide information to competent authorities. General principles of the right of access to law, access to justice and the human right of privacy would otherwise unjustifiably be infringed.

Data protection and privacy: recommendation 4

8. Though the CCBE understands that unnecessary cross-border barriers in transferring information which is relevant to the combating of money-laundering and the financing of terrorism, should be diminished as much as possible, the large amount of data stored nowadays by various authorities, the (lack of) control regarding these stored data and the possible uncontrolled or at least not sufficiently controlled use of those data for other purposes, is of concern to the CCBE. Any recommendation referring to the collecting and transferring of (personal) data by authorities should therefore be accompanied by guarantees to protect this data from being (mis)used for another purpose than the one they were collected for. Further, regulations to prevent possible misuse should be effectively enforced and monitored.

The Financial Intelligence Unit: recommendation 26

9. Here again FATF announces an interpretative note without disclosing the wording of it. The wording, however, establishes to a large extent its scope. Therefore, the CCBE invites the FATF to provide it with the proposed wording of the interpretative note to enable to CCBE to give a more founded response.

International cooperation: recommendation 40

10. Here again the CCBE would like to prevent the cross-border transfer of data or information from being used for other purposes than that which the data and information is collected for.

Other issues

11. Money-laundering and terrorist financing are acts that can be committed anywhere, depending on the perpetrator's preference. Some countries appear to be more vulnerable to those activities than others, but to generally apply an enhanced due diligence on all transactions related to a country³ seems very far-reaching and, again, increases the administrative burden. The risk-based approach suits very well to distinguish those transactions, products or clients that have a high(er) ML/TF risk from those that have not. After all, even in countries which are more vulnerable to ML/TF risks than others there are still low or standard risk level transactions, products and clients. The CCBE has the view that the current risk-based approach can be used in these vulnerable countries as well.
12. The CCBE appreciates that the FATF confirms that a risk-based approach should apply to the supervision of DNFBP's, including by self-regulatory organisations⁴.

PEP

13. In its first response⁵ the CCBE has already given its view that adding a domestic PEP to the group of persons that should be monitored on a high risk basis has no added value.

² 2nd FATF consultation paper sub 12, 2nd bullet (page 7)

³ 2nd FATF consultation paper, sub 27

⁴ 2nd FATF consultation paper, sub 29

⁵ Appendix 1, page 3, sub 11.

The FATF now proposes⁶ to add another group to the group of PEP's, namely those individuals who have been entrusted with prominent functions by an international organisation. As a result, enhanced CDD measures would automatically be required for family members and close associates of these added individuals leading to another increase in the administrative burden.

Conclusion:

14. The CCBE will appreciate an early opportunity to comment on the next stage of the FATF consultation and, especially an opportunity to comment on the actual proposed wording of announced changes to the recommendations or their interpretative notes. Furthermore, the CCBE would like to discuss its response to the first consultation paper, especially the topics that are of importance to the legal professionals. Meanwhile, please do not hesitate to contact us should the FATF require any further information or clarification on the above-mentioned comments.

⁶ 2nd FATF consultation paper, sub 30