



July 31, 2017

Sent via email

Financial Action Task Force Secretariat
2 rue André Pascal - 75775
Paris, France
FATF.Publicconsultation@fatf-gafi.org

Re: Public Consultation on the Draft Guidance for Private Sector Information Sharing

Dear Sir or Madam:

World Council of Credit Unions (World Council) appreciates the opportunity to comment to the Financial Action Task Force (FATF) regarding its *Draft Guidance for Private Sector Information Sharing*. Credit unions are cooperative depository institutions and World Council is the leading trade association and development organization for the international credit union movement. Worldwide, there are over 60,000 credit unions in 109 countries with USD 1.8 trillion in total assets serving 223 million physical person members.¹

World Council appreciates the FATF's efforts to provide guidance and promote information sharing within financial institutions (part of the same financial group) as well as between financial institutions not belonging to the same financial group. Credit unions support efforts to track money laundering and terrorist financing and stop illicit or criminal activity in the financial system.

Information sharing, within proper controls and procedures, can play a vital role in allowing financial institutions and supervisory and law enforcement entities to better deploy resources and develop innovative techniques to combat money laundering. To that end, our comments focus on several goals focusing on finding efficiencies in the coordination between financial institutions and supervisory and law enforcement entities and maintaining the proper balance on administrative burdens and costs to financial institutions.

We have included the attached redlined markup of the Draft Guidance for Private Sector Information Sharing. World Council concurs with many of the identified obstacles to information sharing including the operational and legal constraints. Our concerns stem primarily from the emphasis on strict compliance (which increases compliance burdens on the regulated entity) required under the auspices of differing and often conflicting guidance, regulatory schemes, and a wide array of national level rules on anti-money laundering/countering the financing of terrorism

¹ World Council of Credit Unions, *2015 Statistical Report (2016)*, available at https://www.woccu.org/documents/2015_Statistical_Report_WOCCU.



(AML/CFT). Information sharing is critical for combatting money laundering and terrorist financing and minimizing these regulatory constraints will only enhance the effectiveness of law enforcement while simultaneously reducing the costs and efforts of the regulated financial institutions.

1. World Council's High-Level Principles for Improving AML/CFT Information Sharing

World Council urges the FATF to adopt the following high-level information sharing principles in this guidance, which we have included specific suggested text regarding in Section 2 of this comment letter, below, as well as in redline the accompanying text of the proposal:

1. Information sharing between unaffiliated financial institutions is an essential element of effective AML/CFT compliance, especially with respect to correspondent banking and similar relationships. We urge the FATF to reference expressly the Request for Information (RFI) framework established by its guidance on *Correspondent Banking Services*² in its guidance on information sharing between institutions that are not part of the same group.

Incorporation of the RFI framework into this information sharing guidance will help reduce correspondent banks “de-risking” their client bases and will help improve the system underpinning international capital flows and combat terrorist financing consistently with the G20 Hamburg Summit *Leaders’ Declaration*,³ *Hamburg Action Plan*,⁴ and *G20 Leaders’ Statement on Countering Terrorism*.⁵

2. Information sharing should lead to a system that focuses on filing fewer Suspicious Transaction Reports (STR) under a higher standard focused on actionable plausible evidence of serious wrongdoing as opposed to a system that encourages voluminous filings of STRs with little or no law enforcement or institutional value. Information sharing should be robust not only within a

² FATF, *Correspondent Banking Services* (Oct. 2016), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/correspondent-banking-services.html>.

³ G20, *Leaders’ Declaration* ¶19 (July 2017), available at <https://www.g20.org/Content/EN/Anlagen/G20/G20-leaders-declaration.html>.

⁴ G20, *Hamburg Action Plan*, p.14 (July 2017), available at https://www.g20.org/Content/DE/Anlagen/G7_G20/2017-g20-hamburg-action-plan-en.html (“We welcome the publication of Guidance on Correspondent Banking Services by the FATF and the revised guidance on combating money laundering and terrorist financing in correspondent banking by BCBS. As the decline in the number of correspondent banking relationships is continuing, we look forward to the monitoring by the FATF and BCBS of their guidance and further work towards clarifying regulatory expectations, as appropriate.”).

⁵ G20, *G20 Leaders’ Statement on Countering Terrorism* ¶20 (July 2017), available at https://www.g20.org/Content/DE/Anlagen/G7_G20/2017-g20-statement-antiterror-en.html.



financial institution or group, but also with relevant law enforcement and regulatory bodies;

3. Information sharing, conducted under appropriate policies and procedures that maintain necessary confidentiality, should be encouraged and should be accompanied by safe harbors from civil or administrative liability;
4. Substantial effort should be made to ensure that a group's ability to obtain and review information necessary to carry out its AML/CFT responsibilities is not impaired by local legal requirements. Further, an institution or group should not be penalized where the inability to communicate is the result of local legal barriers and is otherwise unintentional; and
5. Regulations should continuously be revisited to reduce redundancies, reduce unnecessary burdens, and increase opportunities for efficiencies within the AML/CFT framework.

2. World Council's Suggested Revisions to the Text of the Proposal

a. Information Sharing Between Unaffiliated Institutions:

Regarding information sharing between unaffiliated institutions, World Council urges the FATF to incorporate the following text into Section II of this guidance (which World Council has also incorporated as redlined text in the accompanying copy of the proposal):

Information sharing between financial institutions should be encouraged to allow financial institutions to identify and report activities that involve terrorist or money laundering, as well as to help reduce "de-risking" by resolving red flags involving correspondent banking and similar relationships. Any financial institution engaging in information sharing should establish and maintain adequate procedures to protect the security and confidentiality of the information shared. Any information shared should be limited and used only to identify and, where appropriate report on money laundering and terrorist activities, to determine whether to establish or maintain an account, to engage in a transaction; or to assist in AML/CFT compliance.

Regulations should provide for a safe harbour from liability for those institutions sharing information so long as both institutions have established and maintain adequate procedures to protect the security and confidentiality of the information shared. Local jurisdictions should assist or maintain a database to facilitate the point of contact between financial institutions for information sharing.



Regarding correspondent banking and similar relationships, the Request for Information (RFI) information sharing framework established by the FATF's guidance on *Correspondent Banking Services*⁶ should be adopted.

b. Record Storage and Account Closures:

World Council also urges the following underlined additions to the text of the proposal in order to clarify institutions' AML/CFT responsibilities and reduce compliance burdens with respect to record storage and account closures (World Council has also incorporated these edits as redlined text in the accompanying copy of the proposal):

¶ 28. Furthermore, centralised storage of records should not be equated with group-wide sharing of the information contained in records. Access to electronically/centrally stored records should be managed in accordance with confidentiality and other obligations. It should also be noted that the global transaction monitoring must always be done in a manner that enhances compliance with risk management and reporting obligations in all the locations where a multi-national group operates. Thus, monitoring in one location should not weaken compliance with these obligations in other locations where the group operates. However, consideration should be given to local legal constraints on access to confidential information and addressed in the global risk assessment with commensurate measures implemented by the financial group.

¶ 1. Local operations of a global firm have to be in line with local laws and regulations. At the same time, these should also be subject to its group wide compliance programmes to ensure consistent application of controls across the group level. Enforcement of group wide controls and procedures requires sharing of relevant information with financial institution's group compliance. In the case of their foreign operations, where the minimum AML/CFT requirements of the host country are less strict than those of the home country, financial institutions should be required to ensure that their branches and majority-owned subsidiaries in host countries implement the requirements of the home country, to the extent that host country laws and regulations permit. If the host country does not permit the proper implementation of internal controls (including sharing of information, when necessary), financial groups should apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country should consider additional supervisory actions, including placing additional controls on the financial group, including as appropriate, requesting the financial group to close down its relationships with the host country. Requesting the closing of a relationship should only be done as a last resort and only when the risks outweigh the institution's ability to manage the risk through commensurate measures.

⁶ FATF, *Correspondent Banking Services* (Oct. 2016), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/correspondent-banking-services.html>



c. Information Sharing Within Financial Institution Associations:

Regarding information sharing within associations of financial institutions, we urge FATF to permit and encourage information sharing with associations of financial institutions in a manner similar to Canada and the United States of America which have liberal information sharing rules.

In particular, the United States offers specific protection from civil liability from information sharing so long as an institution follows adequate procedures to protect the security and confidentiality of the information. This safe harbor greatly facilitates the ability of institutions share pertinent information between affiliated and unaffiliated institutions.

In the United States, Section 314(a) of the USA Patriot Act encourages financial institutions to share AML/CFT information with the federal government. Section 314(b) of the USA Patriot Act allows financial institutions or associations of financial institutions to share AML/CFT information with each other. Associations of financial institutions are included because they can enhance information-sharing among their members.

Canada has similar information sharing rules allowing the use of financial institution associations to help combat money laundering and other financial crimes. The Canadian Credit Union Association hosts the Credit Union Office of Crime Prevention and Investigation (CUOCPI) to which credit unions may voluntarily belong. This office facilitates sharing of information on fraudulent and other criminal activities between member organizations (which may or may not include AML/CFT matters) and, importantly, allows law enforcement to disseminate advisories or ask for assistance on criminal matters, including AML/CFT ones.

World Council urged the FATF to insert the following underlined text in order to clarify that AML/CFT information sharing via associations of financial institutions is consistent with the FATF's international standards (World Council has also incorporated these edits as redlined text in the accompanying copy of the proposal):

¶ 2. The inability to lawfully share such information may potentially lead to inconsistent application of the group-wide compliance programme within the same corporate umbrella. As an example, it may result in a situation where one subsidiary has filed an STR about a particular client or transaction, but another group entity which is not aware, may fail to notice suspicious behaviour based on similar facts, warranting an STR filing. This inhibits the effectiveness of global group-wide compliance programmes. Furthermore, there may be cases in which such a scenario might render the group entity as a whole not compliant with STR requirements in the second jurisdiction, as knowledge of potential suspicious behaviour by the first affiliate could be imputed to the entity. Institutions should not impute intentional non-compliance to a financial group where inability to communicate effectively was the result of the inability to lawfully share such information.



¶ 42A. To encourage the timeliness of information sharing, local requirements of host countries and law enforcement should provide safe harbours from liability for financial institutions or association so long as it has established and maintains adequate procedures to protect the security and confidentiality of the information.

¶ 42B. Recommendation 21 should be amended to clarify that the prohibition against “tipping off” such that information shared among institutions where sharing is allowed (e.g., USA PATRIOT Act § 314(b) sharing to the extent that it involves transaction and customer information is permissible). Further, an institution should be allowed to report the filing of an STR to the parent or controlling entity such that the enterprise can conduct an effective enterprise wide AML/CFT program.

d. Sharing STR Information and FATF Recommendation 21:

World Council urges the FATF to clarify the relationship between FATF Recommendation 21 (“Tipping-off and confidentiality”)⁷ and paragraphs 52-54 of the proposal on sharing STR information. As proposed, paragraphs 52-54 appear to contradict Recommendation 21 to some degree.

We believe that STR reporting should be confidential, but urge the FATF to state expressly in this guidance that institutions sharing information about the underlying transaction and customer information pursuant to paragraphs 52-54 is compliant with Recommendation 21. World Council therefore urges the FATF to insert a new paragraph 54A in the final version of this guidance, as follows:

54A. Information sharing pursuant to paragraphs 52-54 of this guidance is fully compliant with FATF Recommendation 21 (“Tipping-off and confidentiality”).

3. The FATF Should Encourage the European Commission to Reduce Limitations on AML/CFT Information Sharing Within Financial Institution Associations in the European Union

World Council’s members in the European Union (EU) report that EU data protection regulations typically prohibit information sharing between unaffiliated institutions or within credit union associations, many of which have monitoring departments that help ensure their members’ compliance with applicable laws.

World Council believes that the lack of information sharing authority reported by our members in Europe is likely related to European Union data protection directives and

⁷ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, p. 19 (Feb. 2012), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.



the guidance of the Article 29 Working Party.⁸ Allowing credit union associations in Europe to share information within their financial groups will reduce the ability of bad actors who have been turned away from one credit union from targeting another credit union in the same jurisdiction.

We urge the FATF to encourage the European Commission to propose new EU legislation that would permit AML/CFT information sharing within associations of financial institutions in a manner similar to Canada and the United States of America which have liberal information sharing rules, and consistently with World Council's comments in section 2(c) of this comment letter, above.

Our members in Ireland, Great Britain, and Poland report the following AML/CFT compliance burdens attributable to EU law:

Ireland: In the Republic of Ireland, it is reported that there is relatively little coordination between the Central Bank of Ireland (which has responsibility over AML/CFT matters) and Ireland's Data Protection Commissions, and that Ireland's data protection rules prohibit AML/CFT information sharing between credit unions, their correspondent institutions, and with their credit union associations.

Great Britain: Credit Unions in Great Britain report having their correspondent accounts suspended without warning, and then closed without explanation or the opportunity to try to provide information concerning the underlying transaction(s) behind the account activity or activities that had concerned the bank. Information sharing could greatly reduce these unnecessary "de-risking" events.

Poland: In Poland, financial institutions are obliged to convey AML/CFT information to the General Inspector of Financial Information (the Head of the National Revenue Administration). Furthermore, the General Inspector of Financial Information has legally an exclusive right to request AML/CFT information from a credit union and information on suspicious transactions cannot be shared between individual financial institutions.

The General Inspector of Financial Information is entitled to share collected AML/CFT information with various subjects, e.g. President of the National Association of Co-operative Savings & Credit Unions and Chairman of the Polish Financial Supervision Authority. According to Polish law, the National Association of Co-operative Savings & Credit Unions is entitled to control and

⁸ See "JUST Newsroom – Article 29 Working Party – European Commission," European Commission Directorate General for Justice and Consumers; http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50083 (last visited July 23, 2017).



supervise credit unions regarding their obligations in the matter of AML/CFT. Efforts are underway to create central accounts data where some AML/CFT information sharing functionality will be possible, however, information sharing using this approach is not yet underway.

Conclusion

World Council supports the FATF's efforts to issue guidance on information sharing that permits institutions in all jurisdictions to share AML/CFT information between unaffiliated financial institutions as well as within financial institution associations.

Information sharing between unaffiliated institutions and within associations will help reduce financial crime in general—by making it harder for bad actors to move to the bank or credit union down the street—as well as help reduce “de-risking” in correspondent banking by making it easier for respondent institutions to provide information to correspondent banks that would help resolve red flags and similar ambiguities.

World Council appreciates the opportunity to comment to the FATF on its *Draft Guidance for Private Sector Information Sharing*. If you have questions about our comments, please feel free to contact me at aprince@woccu.org or +1-202-508-6776.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew T. Price". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke.

Andrew T. Price
Regulatory Counsel
World Council of Credit Unions