



Brussels, 11 July 2017

EACB answer to the ESAs Consultation Paper:  
Draft Joint Regulatory Technical Standards  
on the measures credit institutions and financial  
institutions shall take to mitigate the risk of money  
laundering and terrorist financing where a third  
country's law does not permit the application of group-  
wide policies and procedures



*Question 4. Do you agree that the minimum action and additional measures in Article 4 are appropriate?*

*If you do not agree, please explain and provide evidence where possible.*

*Are there any other minimum actions or additional measures you think Article 4 should include?*

*If so, please explain and provide evidence where possible.*

The EACB would like to make the following comments:

- Article 4. 2): It should be clarified in the first section of Article 4, 2) or in Article 4, 4) that the list of additional measures in Article 4, 2) is non-exhaustive.
- Article 4. 2) c): The restriction of the provided financial products and services to low risk products/services that have a low impact on the group's ML/TF risk is too far-reaching. This measure fits more in the catalogue of consequences in Para 3) - as a subtype of Para 3) c) - and should only be applied as a consequence if other risk-mitigating measures such as those listed in Para 2 lit a), b) and d) are not sufficient.

*Question 5. Do you agree that the minimum action and additional measures in Article 5 are appropriate?*

*If you do not agree, please explain and provide evidence where possible.*

*Are there any other minimum actions or additional measures you think Article 5 should include?*

*If so, please explain and provide evidence where possible.*

The EACB would like to make the following comments:

- Article 5. 2) a) and 3): Legal restrictions in third countries for the sharing or processing of customer data within the group should not oblige:
  - to restrict the business in the relevant country to low risk products/services (the additional measures in li b) and c) are regarded as sufficient);
  - to close down some or all of the operations in the third country.

*Question 6. Do you agree that the minimum action and additional measures in Article 6 are appropriate?*

*If you do not agree, please explain and provide evidence where possible.*

*Are there any other minimum actions or additional measures you think Article 6 should include?*

*If so, please explain and provide evidence where possible.*

The EACB would like to make the following comments:

- Article 6, 3): The consequence in Article 6 Para 3 in case of restrictions for information on SARs within a group is too far-reaching.



*Question 8. Are there any other scenarios these RTS should address?  
In particular, are there any policies and procedures in Article 8 of Directive (EU) 2015/849 where the implementation of a third country's law might prevent the application of group-wide policies and procedures?  
Please explain and provide examples where possible.*

The EACB would like to make the following comment:

- Article 8, 2) b): The obligation to restrict the nature and type of financial products and services provided to those customers in a third country jurisdiction that present a low risk and have a low impact on the group's ML/TF risk situation due to certain restrictions and prohibitions on record-keeping prevailing in that third country jurisdiction is exaggerated. The obligation fails to logically understand that low risk products used by customers in long-term business relationships do not per se translate into high risk in case of whether with or without restrictions on record-keeping.

As Article 8, 2) a) allows branches or majority-owned subsidiaries of EU-based credit and financial institutions that are established in the third country to keep the risk profile and due diligence information related to a customer of a branch or majority-owned subsidiary established in the third country up to date and secure as long as legally possible, and in any case for at least the duration of the business relationship a safeguard has been introduced. Subsequently the draft provision of Article 8, 2) b) can be - in the opinion of EACB - dispensed with and therefore deleted.

General remark:

In case where senior management approval is required, it should be clarified if the term "senior management" refers to Head Office or the senior management of the branch or participation in the third country.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department ([m.vanberkel@eacb.coop](mailto:m.vanberkel@eacb.coop))
- Mr. Pablo Lahoz Marco, Adviser, Payment Systems ([p.lahoz@eacb.coop](mailto:p.lahoz@eacb.coop))