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Subject: Public Consultation on AML/CFT and Financial Inclusion - Updated FATF Guidance on AML/CFT Measures and Financial Inclusion

Introduction

The Guideline makes clear that financial inclusion may be unintentionally compromised by anti-money laundering and terrorist financing (AMLR) legislation. From the perspective of churches, we endorse the need for the movement that this Guideline initiates towards a focus on proportionality and simplification of the risk-based approach in particular for low-risk scenarios.

In particular, the rise of mobile digital payment services has led to signals that church institutions have faced barriers in accessing a financial service and in some cases even exclusion since 2018. This response covers two points of the Guidance.

SDD and UBO identification

An exception to mandatory UBO identification for specific legal entities is an option for member states to shape risk-based CDD/SDD and could therefore be named as an option in the Guideline (paragraph 97). Indeed, the specific nature of some legal entities (such as denominations, but also, for example, associations, trade unions and political parties) does not lead to meaningful identification of the ultimate beneficial owner. This is all the more important as UBO identification for church entities is closely linked to the interpretation of the church law in which terms like 'board' or 'senior managing officials' cannot meaningfully be pointed out.

The strength of this Guideline may lie in the fact that it makes explicit to policymakers and supervisors that there is also room under the AMLR for targeted measures for special types of legal entities and explicitly churches. We suggest to explicit the position of churches in Section 3.2.2 and Section 3.2.3 of Chapter 3. Because the position of ecclesiastical institutions is interwoven with the Member State legal structure regarding the recognition of ecclesiastical institutions, a national scope for interpretation is important on this point.

Registration of the UBO in public registers is undesirable for churches, for example, given the importance of non-public registration of religious beliefs (protection of personal data). A possible compromise to overcome this point is to have the names of the pseudo-UBO's of church institutions registered in a non-publicly accessible database to which targeted access by institutions is possible within the purpose of the CDD/SDD.

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NPO and risk-based approach (RBA)

The guidance around NPOs and RBA is important. Using too broad a definition of a NPO combined with the assumption of generic high risk of this category threatens financial inclusion of church entities. An important difference between NPOs and local church institutions is that fundraising and financing external projects is not a core task for most church institutions. Local church institutions merely raise resources to provide for their own local community. No transactions with third countries is therefore an important indicator for a low RBA.

It would be advisable to make it explicit in Chapter 3 of the Guideline that it should be possible not to categorically classify church entities as NPO's solely based on their legal form. Instead, they may require a distinct category of their own.

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