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Common Position on the FATF Proliferation Financing Report of 18 June 2008

Introduction

BUSINESSEUROPE and the European Banking Industry Committee (EBIC) welcome the opportunity to comment on the FATF proliferation financing report of 18 June 2008 (FATF Report). We assume that the Report will now be the basis for further discussions on potential initiatives of the FATF in the area of combating proliferation finance. We have taken coordinated actions with the intention to express our concerns with certain parts of the Report, which could lead to the FATF introducing measures that would create potentially burdensome, superfluous and ineffective checking requirements for banks which, in turn, would weigh heavily on their trade financing, delay business transactions and, hence, severely hamper European export business.

We support effective measures aimed at preventing proliferation as it poses a very serious threat to international peace and security. European companies and financial institutions support the principle of export controls on weapons and dual use goods and are compliant with current EU and national legislation to this end. Credit and financial institutions in Europe are also directly involved in the fight against proliferation of nuclear weapons and other weapons of mass destruction, in particular by applying the existing financial sanctions against specific entities or persons involved in these activities. European companies exporting to third countries have committed a large amount of resources to introducing export-control management systems and training their employees in order to comply with existing regulations. They continuously strive to improve their systems, even as they face fierce competition in international markets.

However we would like to take the opportunity to express the concerns of European business and the European banking industry with regard to certain elements of the FATF Report. We fear that the additional control requirements for credit and financial institutions suggested in the Report in relation to export transactions for which banks provide financing will create additional burdens not only for banks but also for companies engaged in trade, without achieving any tangible improvement in the fight against proliferation. For European business it is of the utmost importance that sanctions and other restrictive measures are designed in a way that allows them to be implemented effectively, without unduly affecting trade in unrestricted goods.



Safeguard priority of export control

Any financial measures contemplated by the Report would add value in the fight against proliferation only if there is a clear apparent need to supplement existing export control systems. In addition, such measures must not put an unduly excessive burden on trade financing institutions and, thus, international trade. As the FATF Report acknowledges, “export controls are a key feature of, and effective implementation is an essential first step to, countering proliferation” (see section 137 of the Report). We would even go further in saying that jurisdictions having an effective system of export controls (primarily addressing export control authorities and exporters) in place should not be required to add financial measures. This is so because creating a second layer of controls at the level of financial institutions would add hardly any insight into the underlying goods transactions (see next section), but very probably would motivate them to either ask their export control authority to check transactions again – i.e. after the exporter has done so - or refuse trade financing transactions. Such unnecessary restrictions on trade financing could undermine the international competitiveness of respective countries. A country with an effective system of export controls will gain nothing in terms of anti-proliferation by the introduction of financial measures, but pay dearly in terms of trading transaction cost for its exporters and banks.

The limited insight of financial institutions into trade transactions

We acknowledge and expressly welcome that the FATF Report addresses the issue of limitations that financial institutions face regarding the detection of proliferation activities. This is indeed a consequence of the fact that financial institutions are only involved in the financial transaction and thus have no insight into the underlying business transaction. However, we still believe that the Report does not take this sufficiently into account when addressing the issue of monitoring/reviewing of transactions.

In particular, the assessment made in section 113, fourth bullet point, has to be rejected in light of the above. It is not the fact that there is little experience with proliferation activities which impedes the successful application of anti-money laundering type due diligence measures in the area of combating proliferation finance. Rather, at the heart of the problem lies the structural obstacle that financial institutions are only involved in financial transactions. However, financial transactions with a proliferation background will not differ structurally from financial transactions with a legitimate background. Furthermore, proliferators will disguise the underlying transaction as non-sensitive, by giving wrong descriptions of the goods or dividing deliveries into several non-sensitive ones. Consequently, there cannot be any indicators or methodology which can help to clearly distinguish financial transactions with a potential proliferation background from other, legitimate transactions.



Negative effects on international trade and safety

We are concerned that the FATF intends to provide a list of Red flag indicators to be used, in whatever form, by economic agents participating in international trade that are subject to financial sector due diligence requirements. The indicators suggested in the Annex are unsuitable for distinguishing proliferation related transactions from legitimate ones. This is correctly addressed in section 173 but should be stressed more clearly. More particularly, we believe that Red flag indicators need to be based on unambiguous and clearly noticeable information and on facts that traceably have a strong association with proliferation. The indicators in the Annex do not meet these requirements. At the same time, the banking community needs legal reliability and clarity: Which, for example, are, in fact, the countries “of proliferation concern”, which the countries “of diversion concern”, which the countries “with weak export control laws or weak enforcement”, etc.? How should financial institutions be in a position to determine circumstances which argue for or against such a status?

The application of such indicators would represent a burden and result in both delays and cost increases from processing foreign trade financing transactions due to banks’ increased review obligations. We are therefore seriously concerned that they will have a disruptive effect on European exporters’ international trade activities, if applied within the framework of due diligence procedures.

We also believe that the excessive burden would not contribute to security and effective prevention of proliferation. Red flag indicators, even if they should be suitable in rather exceptional cases, would lead to an increase in the number of requests by banks to national authorities related to non sensitive exports at the expense of the actually sensitive exports. Faced with legal uncertainty and insufficient knowledge about the underlying business transactions banks would increasingly approach national authorities for clearance. As the capacity of national authorities tends to be already strained this will be at the expense of implementing effective export controls by responsible authorities.

Conclusion: A need for maintaining clearly defined responsibilities

We would like to highlight that, when it comes to fighting proliferation effectively, there is a crucial need for a clear assignment of responsibilities to each actor – export control authorities, trade industry and financial institutions – in line with their economical and legal capacities. Overlapping responsibilities or redundancies and unnecessary burdens on business have to be avoided if we wish our economies to remain competitive. Checking the requirements for the granting of licenses to an exporting company with regard to its products or services clearly falls under the competency of the state. Creating compliance with government export controls is the responsibility of the exporting company. European industry is aware of its responsibility and fully supports the implemented control systems.



The inclusion of banks in these export control systems would blur responsibilities and undermine the objectives of export control. Therefore the FATF should focus its work on strengthening export control systems in countries with no or weak control regimes.

In jurisdictions to be identified by public institutions as having, in fact, no effective export control regime in place, there might be an exceptional need for specific measures to be taken by financial institutions. In those exceptional cases, the most important prerequisite to prevent proliferation financing is the provision of accurate and up-to-date information by intelligence or export control authorities on organisations, companies or individuals related to proliferation, either in the form of a published sanctions lists or on a confidential basis. Any efforts to improve the efficiency in this area should, therefore, concentrate on improving the quality of this information. Efforts should also be made to protect banks that delay or refuse transactions because of such information from civil liability. Other measures, which are ultimately ineffective, will only result in a diversion of resources from where they are urgently required or currently applied efficiently and effectively.

We urge the FATF Secretariat and member states to closely coordinate any follow-up work on the Report in the FATF with the banking and export industry. This cooperation could include, apart from our associations and member institutions, national export control authorities, corporate export control experts, international bodies such as the International Chamber of Commerce, international credit sector associations and the Wolfsberg Group.

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BUSINESSEUROPE – the Confederation of European Business represents more than 20 million small, medium and large companies. Active in European affairs since 1958, BUSINESSEUROPE members are 40 central industrial and employers' federations from 34 countries, working together to achieve growth and competitiveness in Europe.

The European Banking Industry Committee (EBIC) is an advisory Committee, which is regularly called upon by European institutions and international organisations to provide expertise in the field of financial services and ensures a comprehensive consultation of all representatives of the European banking sector on relevant issues. Its members are: the European Banking Federation (EBF) the European Savings Banks Group (ESBG), the European Association of Cooperative Banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope) and the European Association of Public Banks (EAPB).