

PROPOSTE PER EMENDARE LA RACCOMANDAZIONE 1 E LA SUA NOTA INTERPRETATIVA

È INIZIATA LA CONSULTAZIONE PUBBLICA PER LA REVISIONE DELLA RACCOMANDAZIONE 1 DEL FATF-GAFI E DELLA SUA NOTA INTERPRETATIVA PER INGLOBARE ANCHE PROFILI DI LOTTA ALLA PROLIFERAZIONE DI ARMI DI DISTRUZIONE DI MASSA.

INVIARE I VOSTRI COMMENTI AL SEGUENTE LINK ENTRO IL 31 AGOSTO 2020:

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/consultation-recommendation-1.html>

DI SEGUITO LA COMUNICAZIONE DEL FATF-GAFI CHE TROVATE ANCHE QUI

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Draft Proposals for amendments to Recommendation 1 and its Interpretive Note (for public consultation)

For more information and to submit your comments, please see:

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/consultation-recommendation-1.html>

(Draft proposals for amendments are highlighted in red and underlined)

Recommendation 1

Assessing risks and applying a risk-based approach

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering, and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions.

Countries should also identify, assess, and understand the proliferation financing risks for the country. In the context of Recommendation 1, “proliferation financing risk” refers strictly and only to the potential breach, non-implementation or evasion of the targeted financial sanctions obligations referred to in Recommendation 7. Countries should take commensurate action aimed at ensuring that these risks are mitigated effectively, including designating an authority or mechanism to coordinate actions to assess risks, and allocate resources efficiently for this purpose. Where countries identify higher risks, they should ensure that they adequately address such risks. Where countries identify lower risks, they should ensure that the measures applied are commensurate with the level of proliferation financing risk, while still ensuring full implementation of the targeted financial sanctions as required in Recommendation 7.

Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering, terrorist financing, and proliferation financing risks.

Interpretive Note to Recommendation 1 (Assessing risks and applying a risk-based approach)

Assessing ML/TF risks and applying a risk-based approach

1. The risk-based approach (RBA) is an effective way to combat money laundering and terrorist financing. In determining how the RBA should be implemented in a sector, countries should consider the capacity and anti-money laundering/countering the financing of terrorism (AML/CFT) experience of the relevant sector. Countries should understand that the discretion afforded, and responsibility imposed on, financial institutions and designated non-financial bodies and professions (DNFBPs) by the RBA is more appropriate in sectors with greater AML/CFT capacity and experience. This should not exempt financial institutions and DNFBPs from the requirement to apply enhanced measures when they identify higher risk scenarios. By adopting a risk-based approach, competent authorities, financial institutions and DNFBPs should be able to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified, and would enable them to make decisions on how to allocate their own resources in the most effective way.
2. In implementing a RBA, financial institutions and DNFBPs should have in place processes to identify, assess, monitor, manage and mitigate money laundering and terrorist financing. The general principle of a RBA is that, where there are higher risks, countries should require financial institutions and DNFBPs to take enhanced measures to manage and mitigate those risks; and that, correspondingly, where the risks are lower, simplified measures may be permitted. Simplified measures should not be permitted whenever there is a suspicion of money laundering and terrorist financing. Specific Recommendations set out more precisely how this general principle applies to particular requirements. Countries may also, in strictly limited circumstances and where there is a proven low risk of money laundering and terrorist financing, decide not to apply certain Recommendations to a particular type of financial institution or activity, or DNFBP (see below). Equally, if countries determine through their risk assessments that there are types of institutions, activities, businesses or professions that are at risk of abuse from money laundering and terrorist financing, and which do not fall under the definition of financial institution or DNFBP, they should consider applying AML/CFT requirements to such sectors.

Assessing proliferation financing risks and applying risk-based measures

3. In the context of Recommendation 1, “proliferation financing risk” refers strictly and only to the potential breach, non-implementation or evasion of the targeted financial sanctions obligations referred to in Recommendation 7.¹ These obligations set out in Recommendation 7 place strict legal requirements on all natural and legal persons, which are not risk-based. In the context of proliferation financing, risk-based measures by financial institutions and DNFBPs seek to reinforce and complement the full implementation of the strict requirements of Recommendation 7, by detecting and preventing the non-compliance, potential breach, or evasion of targeted financial sanctions. In determining the measures to mitigate proliferation financing risks in a sector, countries should consider the proliferation financing

¹ Paragraphs 1 and 2 of the Interpretive Note to Recommendation 7, and the related footnotes, set out the scope of Recommendation 7 obligations; including that it is limited to targeted financial sanctions and does not cover other requirements of the UNSCRs. The requirements of the FATF Standards relating to proliferation financing are limited to Recommendations 1, 2, 7 and 15 only. The requirements under Recommendation 1 for PF risk assessment and mitigation, therefore, do not expand the scope of other requirements under other Recommendations.

risks associated with the relevant sector. By adopting risk-based measures, competent authorities, financial institutions and DNFBPs should be able to ensure that these measures are commensurate with the risks identified, and that would enable them to make decisions on how to allocate their own resources in the most effective way.

4. Financial institutions and DNFBPs should have in place processes to identify, assess, monitor, manage and mitigate proliferation financing risks. Countries should ensure full implementation of Recommendation 7 in any risk scenario. Where there are higher risks, countries should require financial institutions and DNFBPs to take commensurate measures to manage and mitigate the risks. Where the risks are lower, they should ensure that the measures applied are commensurate with the level of risk, while still ensuring full implementation of the targeted financial sanctions as required by Recommendation 7.

A. Obligations and decisions for countries

ML/TF risks

5. **Assessing ML/TF risks** – Countries² should take appropriate steps to identify and assess the money laundering and terrorist financing risks for the country, on an ongoing basis and in order to: (i) inform potential changes to the country’s AML/CFT regime, including changes to laws, regulations and other measures; (ii) assist in the allocation and prioritisation of AML/CFT resources by competent authorities; and (iii) make information available for AML/CFT risk assessments conducted by financial institutions and DNFBPs. Countries should keep the assessments up-to-date, and should have mechanisms to provide appropriate information on the results to all relevant competent authorities and self-regulatory bodies (SRBs), financial institutions and DNFBPs.
6. **Higher risk** – Where countries identify higher risks, they should ensure that their AML/CFT regimes addresses these higher risks, and, without prejudice to any other measures taken by countries to mitigate these higher risks, either prescribe that financial institutions and DNFBPs take enhanced measures to manage and mitigate the risks, or ensure that this information is incorporated into risk assessments carried out by financial institutions and DNFBPs, in order to manage and mitigate risks appropriately. Where the FATF Recommendations identify higher risk activities for which enhanced or specific measures are required, all such measures must be applied, although the extent of such measures may vary according to the specific level of risk.
7. **Lower risk** – Countries may decide to allow simplified measures for some of the FATF recommendations requiring financial institutions and DNFBPs to take certain actions, provided that a lower risk has been identified, and this is consistent with the country’s assessment of its money laundering and terrorist financing risk, as referred to in paragraph 3.
 1. Independent of any decision to specify certain lower risk categories in line with the previous paragraph, countries may also allow financial institutions and DNFBPs to apply simplified customer due diligence (CDD) measures, provided that the requirements set out in Section B below (“Obligations and decisions for financial institutions and DNFBPs”), and in paragraph 7 below, are met.

² Where appropriate, AML/CFT risk assessments at a supra-national level should be taken into account when considering whether this obligation is satisfied.

8. **Exemptions** - Countries may decide not to apply some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided:
2. (a) there is a proven low risk of money laundering and terrorist financing; this occurs in strictly limited and justified circumstances; and it relates to a particular type of financial institution or activity, or DNFBP; or
 3. (b) a financial activity (other than the transferring of money or value) is carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of money laundering and terrorist financing.
 4. While the information gathered may vary according to the level of risk, the requirements of Recommendation 11 to retain information should apply to whatever information is gathered.
9. **Supervision and monitoring of risk**- Supervisors (or SRBs for relevant DNFBPs sectors) should ensure that financial institutions and DNFBPs are effectively implementing the obligations set out below. When carrying out this function, supervisors and SRBs should, as and when required in accordance with the Interpretive Notes to Recommendations 26 and 28, review the money laundering and terrorist financing risk profiles and risk assessments prepared by financial institutions and DNFBPs, and take the result of this review into consideration.

PF risk

10. **Assessing PF risk** - Countries³ should take appropriate steps to identify and assess the proliferation financing risks for the country, on an ongoing basis and in order to: (i) inform potential changes to the country's CPF regime, including changes to laws, regulations and other measures; (ii) assist in the allocation and prioritisation of CPF resources by competent authorities; and (iii) make information available for PF risk assessments conducted by financial institutions and DNFBPs. Countries should keep the assessments up-to-date, and should have mechanisms to provide appropriate information on the results to all relevant competent authorities and SRBs, financial institutions and DNFBPs.
11. **Mitigating PF risk** - Countries should take appropriate steps to manage and mitigate the proliferation financing risks that they identify. Countries should develop an understanding of the means of potential breaches, evasion and non-implementation of targeted financial sanctions present in their countries that can be shared within and across competent authorities and with the private sector. Countries should ensure that financial institutions and DNFBPs take steps to identify circumstances, which may present higher risks and ensure that their CPF regime addresses these risks. Countries should ensure full implementation of Recommendation 7 in any risk scenario. Where there are higher risks, countries should require financial institutions and DNFBPs to take commensurate measures to manage and mitigate these risks. Correspondingly, where the risks are lower, they should ensure that the measures applied are commensurate with the level of risk, while still ensuring full implementation of the targeted financial sanctions as required by Recommendation 7.

³ Where appropriate, PF risk assessments at a supra-national level should be taken into account when considering whether this obligation is satisfied.

B. Obligations and decisions for financial institutions and DNFBPs

ML/TF Risks

12. **Assessing ML/TF risks** - Financial institutions and DNFBPs should be required to take appropriate steps to identify and assess their money laundering and terrorist financing risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). They should document those assessments in order to be able to demonstrate their basis, keep these assessments up to date, and have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs. The nature and extent of any assessment of money laundering, terrorist financing risks should be appropriate to the nature and size of the business. Financial institutions and DNFBPs should always understand their money laundering, terrorist financing risks, but competent authorities or SRBs may determine that individual documented risk assessments are not required, if the specific risks inherent to the sector are clearly identified and understood.
13. **Risk management and mitigation** - Financial institutions and DNFBPs should be required to have policies, controls and procedures that enable them to manage and mitigate effectively the risks that have been identified (either by the country or by the financial institution or DNFBP). They should be required to monitor the implementation of those controls and to enhance them, if necessary. The policies, controls and procedures should be approved by senior management, and the measures taken to manage and mitigate the risks (whether higher or lower) should be consistent with national requirements and with guidance from competent authorities and SRBs.
14. **Higher risk** - Where higher risks are identified financial institutions and DNFBPs should be required to take enhanced measures to manage and mitigate the risks.
15. **Lower risk** - Where lower risks are identified, countries may allow financial institutions and DNFBPs to take simplified measures to manage and mitigate those risks.
16. When assessing risk, financial institutions and DNFBPs should consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level of mitigation to be applied. Financial institutions and DNFBPs may differentiate the extent of measures, depending on the type and level of risk for the various risk factors (e.g. in a particular situation, they could apply normal CDD for customer acceptance measures, but enhanced CDD for ongoing monitoring, or vice versa).

PF risk

17. **Assessing PF risk** - Financial institutions and DNFBPs should be required to take appropriate steps to identify and assess their proliferation financing risks. They should document those assessments in order to be able to demonstrate their basis, keep these assessments up to date, and have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs. The nature and extent of any assessment of proliferation financing risks should be appropriate to the nature and size of the business. Financial institutions and DNFBPs should always understand their proliferation financing risks, but competent authorities or SRBs may determine that individual documented risk assessments are not required, if the specific risks inherent to the sector are clearly identified and understood.
18. **Mitigating PF risk** - Financial institutions and DNFBPs should have policies, controls and procedures to manage and mitigate effectively the risks that have been identified. They should be required to monitor the implementation of

those controls and to enhance them, if necessary. The policies, controls and procedures should be approved by senior management, and the measures taken to manage and mitigate the risks (whether higher or lower) should be consistent with national requirements and with guidance from competent authorities and SRBs. Countries should ensure full implementation of Recommendation 7 in any risk scenario. Where there are higher risks, countries should require financial institutions and DNFBPs to take commensurate measures to manage and mitigate the risks (i.e. introducing enhanced controls aimed at detecting possible breaches, non-implementation or evasion of targeted financial sanctions under Recommendation 7). Correspondingly, where the risks are lower, they should ensure that those measures are commensurate with the level of risk, while still ensuring full implementation of the targeted financial sanctions as required by Recommendation 7.