Response by the European Network of Credit Unions

The European Network of Credit Unions (ENCU) welcomes the opportunity to comment on the Commission’s ongoing review of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Credit unions generally pose a low money laundering risk in the financial system. Regulatory requirements on anti-money laundering (AML) are however often difficult and expensive for credit unions to comply with. The ENCU therefore supports the Commission in developing a strong and clear risk-based approach to minimise the administrative burden of complying with AML rules for institutions, with at times limited resources, that serve low-risk members and undertake low-risk activities.

About Credit Unions and their Anti-Money Laundering Risk Profile

Credit unions are not-for-profit cooperative organisations that have members who usually live and work in the local community where the credit union’s office or offices are located. Many credit unions in Europe are very small (often having less than €1 million in assets), are partly and at times entirely run by volunteers, and are governed by an unpaid board of directors. These institutions have limited capacity to deal with detailed and prescriptive regulations but they are nonetheless critical for their local, often rural, communities.

Most European credit unions are community-based because of geographic “common bond” legal requirements which limit credit union membership to people who live and work in a specified local community. Even credit unions without de jure geographic “common bonds,” however, typically have de facto geographic membership limitations because their office(s) are located only within a limited local area.

Credit unions in the EU therefore present in general a low money laundering risk due to their localised operations and membership requirements (which often necessitate a detailed and extensive customer due diligence (CDD) inquiry about the member’s residence, profession, and so forth), their lack of exposure to correspondent banking or clearing networks, and their relatively limited product and service offerings compared to European banks.

1 The European Network of Credit Unions (ENCU) is comprised of European members of the World Council of Credit Unions and represents the Association of British Credit Unions Ltd., the Irish League of Credit Unions, the Polish National Association of Cooperative Savings and Credit Unions, the Central Federation of Romanian Credit Unions, the Estonian Union of Credit Cooperatives, and FULM Savings House of the former Yugoslav Republic of Macedonia. The ENCU represent over 1,000 credit unions serving more than six million citizens. Credit unions also exist in other parts of Europe such as Lithuania, Latvia, and Ukraine.
Risk-Based CDD and Financial Inclusion

We are highly supportive of a strong risk-based approach and measures to promote financial inclusion of unbanked persons in a revised EU legal framework for AML. A risk-based approach and measures to promote financial inclusion would help reduce AML-related regulatory burden on credit unions and make it easier for unbanked individuals to improve their lives through access to credit union services.

The Financial Action Task Force (FATF) has concurred that credit unions in Members States like Ireland have in general a low AML risk profile. In its 2006 Mutual Evaluation Report on Ireland (paragraph 331), the FATF stated that “comprehensive CDD assessments of credit unions’ customers are made easier in practice as membership is usually based on geographical area or a particular occupation. Customers are therefore often personally known to credit union managers. CDD requirements and the operational practices of credit unions appear to conform to particularly high standards.”

We believe that a clearly-defined risk-based AML approach is consistent with the FATF’s revised International Standards for Combating Money Laundering & the Financing of Terrorism & Proliferation: The FATF Recommendations issued in February 2012. This recent FATF guidance reemphasises the risk-based approach set forth in prior FATF AML recommendations. For example, the FATF’s Interpretative Note 17 to new FATF Recommendation 10 (“Customer Due Diligence”), lists permissible simplified CDD measures in the case of low-risk customers, including:

- Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship (e.g. if account transactions rise above a defined monetary threshold).
- Reducing the frequency of customer identification updates.
- Reducing the degree of on-going monitoring and scrutinising transactions, based on a reasonable monetary threshold.
- Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.

Similarly, the FATF defines lower-risk activities in Interpretive Note 17 to include “financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes.” The FATF also developed in June 2011 a Guidance Paper on Anti-money laundering and terrorist financing measures and Financial Inclusion that provides further clarity regarding permissible streamlined CDD procedures in the financial inclusion context (including regarding documents accepted for customer verification), and it is our understanding that the FATF will likely promulgate additional financial inclusion guidance later this year.

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4 See id. at 64-65.
5 Id.
While the current EU AML regime already provides for a risk-based approach, clear guidance would help implement it coherently across the EU. We recognise that simplified AML measures may not be applicable to credit unions on an institution-wide basis per se. We ask, however, that the Commission consider fully when developing amendments to Directive 2005/60/EC the relatively limited AML risk profiles of most credit unions and credit union members, credit unions’ important role in promoting financial inclusion, and credit unions’ concerns regarding regulatory compliance burden.

**Credit Union Concerns about AML Requirements**

Credit unions are currently facing difficulties with AML requirements in the following areas:

**Customer Due Diligence (CDD)**

Compliance obligations in relation to CDD present AML requirements’ most significant operational impact on credit unions. For instance, one significant area of concern for credit unions in the Republic of Ireland has been the local interpretation of the FATF’s recommendation which requires credit unions to expend much effort to verify the identity of individuals who have been members of the credit union for twenty years or longer.

There are additional barriers that currently make it difficult for some parts of the population to access financial services, including migrants and Roma with no sufficient identification or permanent residence. Many providers currently apply the rules very rigidly, which excludes individuals who do not hold mainstream documentation such as a passport or a driving licence.

**Politically Exposed Persons (PEPs)**

Credit unions are concerned that the FATF’s recent recommendation to expand the “Politically Exposed Persons” (PEPs) definition to domestic PEPs may in practice require all credit unions—regardless of their size—to pay for access to PEPs commercial databases. These databases, however, can be prohibitively expensive for credit unions. Further, the Commission has reported in relation to the implementation of Directive 2005/60/EC for PEPs that “there are issues related to the availability, cost and accuracy of information available from databases.” The creation of an EU-wide, free to use, PEPs list would aid greatly in the implementation of this requirement. We therefore suggest that the production of such a list at EU level should be a prerequisite for implementation of domestic PEP checking as recommended by the FATF.

**Reporting of AML Risk**

Article 27 of Directive 2005/60/EC on AML states that “Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.” This is an issue of serious concern for credit unions.

Credit unions are community-based institutions, with the majority of European credit unions having geographic common bonds (i.e. only persons who live and/or work in a specific local area can become members). Credit

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union volunteers and staff are therefore often well-known locally and are more susceptible to the sort of threats, intimidation and hostile action referred to in Directive 2005/60/EC than might be the case for staff in larger financial institutions.

We believe that an EU legal framework on AML must protect the identity of the person reporting a suspicious transaction and the identity of the Money Laundering Reporting Officer (MLRO) at a local level. This approach is consistent with the FATF’s new AML Recommendation 21 on “Tipping-off and confidentiality.”

We are concerned, however, that some Member States’ AML procedures have features that, in practice, run counter to the goals of maintaining AML reporting confidentiality and preventing tip-offs. In the United Kingdom, for example, the FSA maintains a publically available register of all MLROs as approved persons under its Approved Persons Regime. In the Republic of Ireland, credit unions are forced to use normal local community postal mail networks to send and receive clearly identifiable correspondence from the competent authority—including the actual suspicious transaction reports (STRs)—even though the presence of such correspondence through a small community’s mail could compromise reporting confidentially and/or result in an inadvertent tip-off to criminals.

One possible approach to help address confidentiality concerns would be to treat STRs used in judicial proceedings as self-authenticating documents that are exempt from hearsay and/or similar evidentiary rules (such as the Right to Confrontation) which exist in some Member States. Australia and its Australian Transaction Reports and Analysis Centre (AUSTRAC) already accord this type of evidentiary privilege to STRs, whereby the STR stands as evidence in itself and the MLRO is not required to testify at trial to authenticate the report or the truth of the information asserted in it.

**AML and data protection**

In some Member States, AML requirements and data protection requirements are set by separate regulatory agencies and these agencies have sometimes taken conflicting positions regarding AML data preservation requirements vis-à-vis data protection requirements. In Ireland, for example, credit unions have been left in the difficult position of being told to keep certain records for AML compliance purpose by the Irish Central Bank while also being instructed not to retain such records by Ireland’s Data Protection Commissioner. The Article 29 Working Party has noted these inconsistencies. We urge the Commission to address the issue of conflicts between AML requirements and data protection requirements as part of its review of Directive 2005/60/EC.

**Conclusion**

We urge the Commission to develop clear guidelines for Member States’ regulators regarding simplified AML measures that are based on the FATF’s guidance. By adopting a proposal with a strong risk-based approach and streamlined procedures for low-risk customers and financial inclusion, the Commission will be able to reinforce the EU’s already strong AML regime while at the same time promoting financial inclusion and limiting unnecessary regulatory burdens on credit unions.

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Thank you very much for considering our position. Please do not hesitate to contact myself or Anne Schneider at +32 2 626 9500 should you have any questions regarding our comments.

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