


# POSITION PAPER



## **WSBI-ESBG Position Regarding the Implementation of Automatic Exchange of Information within the EU and Globally**

WSBI (World Savings and Retail Banking Institute)  
ESBG (European Savings and Retail Banking Group)

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WSBI



ESBG



The World Savings and Retail Banking Institute (WSBI) and the European Savings and Retail Banking Group (ESBG) represent savings and retail banks in Europe and world-wide. Savings banks across Europe and globally have an embedded social commitment to the communities and regions in which they operate. This is an integral part of their identity and one of their distinctive features amongst retail banking financial institutions.

With this position paper we would like to take the opportunity to raise a few points that in our mind are essential when moving forward with the development of a global multilateral system of Automatic Exchange of Information (AEOI). We welcome the assertions by the European Commission and Commissioner Šemeta that the Common Reporting Standard (CRS) produced by the OECD and endorsed by the G20 will be incorporated into European legislation by an updated proposed amendment to the Directive on Administrative Cooperation (DAC) and we fully support the work done towards the creation of one global multilateral standard for AEOI. We ask that the requirement for AEOI within the recently agreed European Union Savings Directive (EUSD) is also aligned with the CRS to ensure that the final multilateral agreement is truly aligned with a global agreement.

The harmonisation of reporting requirements is a key factor that we hope that the European institutions consider during the continued development of a multilateral system for the automatic exchange of information. In this context we would also ask that the European institutions consider opening a discussion with their US counterparts regarding a harmonisation of the timetable for the implementation of FATCA with a multilateral system to enable financial institutions to benefit from economies of scale when implementing the required systems to enable AEOI.

It is also in this context that we really must emphasise that any move away from a global standard towards specific information required at an EU-level would not only undermine the global level playing field but also cause a very costly and undue burden on our members and we thus urge the European institutions to avoid any moves in this direction. The un-level playing field faced by European institutions would also cause extensive additional costs, operationally and from a technology point of view which would severely penalise in particular smaller financial institutions.

Another key factor to consider when developing a standard of this scale is the focus on the client rather than the account in existing AML and KYC procedures world-wide. We are concerned that the current standard from the OECD is overly focused on processes for accounts and would welcome a clarification in the accompanying commentary that it is the individual or entity that is in focus for the purposes of information-exchange, not the individual account.

Regarding the Common Reporting Standard from the OECD we understand that work is currently underway in regards to the development of the explanatory commentary accompanying the standard. It is our understanding that the European Commission is very involved in the development of this commentary and we would therefore like to raise a few points that we believe are important to consider.

The CRS has in one very important regard taken a step away from the Inter-Governmental Agreement (IGA) 1 that most countries have agreed with the US for FATCA, namely regarding voluntary thresholds for due diligence for individual accounts. We would ask that the accompanying commentary to the CRS allows for the introduction of a voluntary threshold for individual accounts of €50,000 in order to align a multilateral agreement with the already agreed upon FATCA IGA.



We support the development of a commentary that allows for existing AML and KYC procedures including procedures for the establishment of tax residency, to be maintained within individual Member States. These procedures vary but adhere to existing legislative demands. It would be very costly to require a standardised approach and we question whether the cost incurred by the introduction of a standardised approach is warranted in light of the outcome considering that current AML and KYC procedures must be in line with Member States legislation based on the EU Directive on AML.

WSBI-ESBG is concerned with the proposed treatment of new accounts by existing account holders as new accounts. It is very costly and time-consuming for financial institutions to manage the distribution and follow-up required when using self-certification forms. We recognise the need to have a TIN associated with all accounts and that new accounts for existing customers should have a TIN assigned in order to improve the matching rate when information is exchanged between jurisdictions but we ask that a self-certification form is not deemed necessary for existing customers as long as the customer is registered with the bank in accordance with existing AML and KYC procedures.

There are currently several EU Member States systems in place that allows for the identification of an address without the use of a self-certification form and we ask you to consider these systems as sufficient. As an example please consider the Swedish situation where the Swedish Tax Administration maintains the Swedish government's Public Address Register (the SPAR-register). The SPAR-register contains data concerning all persons who are registered as resident in Sweden. The SPAR-register contains for example the following information regarding individuals:

- name,
- address,
- personal identity number and co-ordination number (among many other things, used for tax purposes in Sweden),
- place of birth, and
- Swedish citizenship.

Historical data is available concerning for example residency. The personal data in the SPAR-register is updated each day with data from the Swedish Population Register. The SPAR-register is specifically regulated in national law in the "Statens Personadressregister Act" with an accompanying Regulation and in the Swedish Tax Agency Regulation on handing out of data from the SPAR-register.

The aim and the purpose of the SPAR-register is to process data for the purposes of:

- updating, supplementing and verifying personal information, or
- selecting names and addresses for, for example, public service announcements or other comparable activities.

The SPAR-register is frequently used by public authorities as well as the private sector including the financial sector. Banks are for example using the register in relation to account opening procedures and controls for tax purposes.

The information in the SPAR-register should have the same evidentiary value as the documentation listed in subparagraph E.6 of Section VIII of the CRS and a certainly greater evidentiary value than the information in a self-certification. The possibility for Swedish Financial Institutions to use the information in the SPAR-register as documentary evidence would in many cases significantly reduce their administrative burden. In addition we also ask that for new accounts "Documentary Evidence"



together with relevant questions posed as part of the account opening process (which secures equivalent information to that provided in a self-certification form) is accepted as a substitute for a self-certification form.

We ask that the notion of a self-certification form is extended from simply being a paper form to include system-integrated questions which are posed as part of the KYC/AML procedure. If the self-certification must be a very strict standardised form (paper or digital) many financial institutions who have worked tirelessly towards becoming paperless, often doing this due to strong encouragement from its authorities, would need to go back to an analogue treatment of this form which would be less efficient and more resource-heavy without any certainties of an improved outcome. In a system such as the SPAR system outlined above there is in fact a strong argument in favour of indicia being much more reliant than a self-certification form and we would therefore argue that even for new customers identification SPAR should be sufficient and the self-certification form is not essential.

We propose that the commentary should treat a financial institution as “maintaining” (a word that is not defined in the CRS) an account as of the cut-off date for pre-existing accounts (i.e., treat the account as a pre-existing Account) if the account is opened by a customer that holds another account with the financial institution as of the cut-off date and that the Financial Institution:

- (i) may rely for AML/KYC purposes on the customer due diligence done with respect to the existing account; and;
- (ii) treats the accounts as a single account for purposes of applying any threshold or review for change in circumstances.

We understand the belief that the procedures for new accounts provide greater certainty regarding the tax residency of account holders, and that the procedures for pre-existing accounts are intended as a way to reduce the burden on reporting financial institutions (RFIs) based on at least two justifications. First, given the number of pre-existing accounts at many RFIs, it would be cost prohibitive to manually review each new account for a pre-existing client and to get a self-certification for each new account opened by a pre-existing account holder. Second, it may not be possible for an RFI to get any response, much less a self-certification, from an existing customer.

We also understand that stakeholders have expressed the view that, when an existing customer opens a new account, the second rationale for reliance on the procedures for pre-existing accounts is eliminated, because the customer has to interact with the RFI and can be forced to provide a self-certification. This may in some cases be possible, but the first rationale – that such a requirement would be cost-prohibitive – still applies. This is because, in general, an RFI cannot just change one set of account opening procedures to require a self-certification on the opening of a new account. The generally accepted way of opening accounts today is that the client is KYC/AML and tax residency checked, after that process the client is approved to open any account or buy any product (except for signing up for credits for reasons that has little to do with residence address or tax residency).

In general, and at a conceptual level, each different type of account is maintained in a different system and, perhaps more importantly, those systems do not treat an existing customer as opening a new account, but rather as simply engaging in a transaction. Thus, every product system of the RFI would have to be re-engineered to treat certain transactions as requiring self-certifications before they could be executed. This would be unacceptably disruptive and prohibitively expensive.



Moreover, an existing customer of a financial institution is able to make new investments in financial products through many different mediums including phone, web and mail. The way these systems are programmed currently, the new account for an existing client carries over the original onboarding information (account preferences, tax certifications, AML KYC) to the new account and a new account application is usually not completed. This flow is an example of an In Good Order (IGO) transaction.

Adding a requirement to interrupt the flow of the transaction and mandate a self-certification at the time of the transaction request would require not only costly enhancements to these transaction systems, but also would put in jeopardy the ability for the transaction to continue at the speed of business as the transaction would be treated as Not In Good Order (NIGO) until the additional requirement of a self-certification was obtained. During this delay, the customer is exposed to market risk as the interruption to the transaction flow could result in the customer not completing the transaction at the time it was originally requested.

Due to current AML and KYC procedures it will be impossible for Financial Institutions to contact existing customers for a self-certification form. Customers are informed that Financial Institutions will not contact them and ask for any sensitive information. If customers consequently are contacted this will be a phishing attack by an illegal element and should be reported but absolutely not acted upon by the customer.



## About WSBI (World Savings Banks Institute)

### **WSBI – The Global Voice of Savings and Retail Banking**

WSBI brings together savings and retail banks from 90 countries, representing the interests of approximately 7,000 banks in all continents. As a global organisation, WSBI focuses on issues of global importance affecting the banking industry. It supports the aims of the G20 in achieving sustainable, inclusive and balanced growth and job creation around the world, whether in industrialised or less developed countries. WSBI favours an inclusive form of globalisation that is just and fair, supporting international efforts to advance financial access and financial usage for everyone. It supports a diversified range of financial services that responsibly meet customers' transaction, saving and borrowing needs. To these ends, WSBI recognises that there are always lessons to be learned from savings and retail banks from different environments and economic circumstances. It therefore fosters the exchange of experience and best practices among its members and supports their advancement as sound, well-governed and inclusive financial institutions.

WSBI represents more than 6,150 financial institutions from 89 countries. At the end of 2011, these institutions operate through more than 220,000 branches and outlets, employ more than 2.2 million people and serve more than 850 million customers. Assets of member institutions amounted to more than US \$16.7 trillion at the end of 2011, while non-bank loans amounted to US \$ 8 trillion and non-bank deposits 7.2 trillion.

### **About ESBG (European Savings and Retail Banking Group)**

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,300 billion, non-bank deposits of €3,480 billion and non-bank loans of €3,950 billion (31 December 2012).



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