

Template for comments on draft revisions to ICP 22: Anti-money laundering and combating the financing of terrorism

This ICP material is presented for public consultation. Comments should focus on changes to the current ICP. The deadline for comments is Tuesday 20 August 2013.

Comments should be sent to the Secretariat (jun.lee@bis.org).

Name/organisation	Paragraph reference	Comment	Proposed resolution (for use of the Secretariat only)
Insurance Europe	22.0.3	<p>Insurance Europe suggests the following rewording:</p> <p><i>The supervisor should have a risk-based approach towards the measures that it takes as well as towards those required of insurers and intermediaries.</i></p>	
Insurance Europe	22.0.4	<p>Insurance Europe believes that the analysis of the risk should follow a Risk-Based Approach (RBA) to allow insurers to use their resources in the most effective manner.</p> <p>Insurance Europe thus suggests the following rewording:</p> <p><i>The supervisor should, on the basis of an analysis of the risk of ML/FT, and in line with the risk-based approach, consider whether or not and to what extent this ICP and related standards and guidance should apply to the non-life sector.</i></p>	
Insurance Europe	22.0.5	<p>FATF Recommendations are not enforceable if not included in law or enforced by other means. Therefore, Insurance Europe suggests redrafting this paragraph to avoid misinterpretation.</p> <p>Insurance Europe thus suggests the following rewording:</p> <p><i>The IAIS Application Paper on combating money laundering and terrorist financing provides instructive information on what the Financial Action Task Force (FATF) Recommendations, transposed locally into national law requires , by way of law, and or other enforceable means, and provides information on how insurers and insurance intermediaries can meet the FATF's AML/CFT requirements.</i></p>	
Insurance Europe	22.1	<p>Insurance Europe suggests adding a reference to the appropriate jurisdiction for which the supervisor is responsible.</p>	

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		<p>The first sentence under 22.1 could therefore read: <i>The supervisor has a thorough and comprehensive understanding of the ML/TF risks to which insurers and intermediaries are exposed in their jurisdiction, [...]</i>“</p> <p>This suggestion should also be applied to other sections included in the paper, where appropriate.</p>	
Insurance Europe	22.1.2	<p>Insurance Europe appreciates the inclusion of the indication that the list of features ‘may increase’ the risk profile, but that this is not the case automatically. It also welcomes the recognition that some of the included features are not necessarily inherently suspicious.</p> <p>However, Insurance Europe suggests deleting those features that do not increase the risk at all. This is the case for the following feature:</p> <ul style="list-style-type: none"> • <i>Products that allow for assignment without the insurer being aware that the beneficiary of the contract has been changed until such time as a claim is made.</i> In many life insurance policies - especially occupational pension policies offered by insurers – it occurs that the beneficiary of the contract (not the Member of the scheme) changes before the claim is made, possibly several times within the contract duration (marriage, divorce, remarriage, death ...). This should not automatically lead to an increase of the risk. We would also stress that such an approach would contradict the FATF interpretative note on CDD on beneficiaries of life insurance policies, which highlights that the final institution should collect information to ensure that it is able to identify the name of the beneficiary <u>at the time of pay-out</u>. This does not require regular monitoring of the possible beneficiary and should therefore also not be recognised as possibly increasing ML/FT risk profiling. 	
Insurance Europe	22.2	<p>Situations where the supervisors put enforceable rules on insurers and intermediaries for matters which are not in law might lead to difficulties for insurers if these measures would be in conflict with data protection regulation. This should be taken account of.</p>	

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Insurance Europe	8	<p>Insurance Europe disagrees with the use of the reference to fixed and variable annuities. In general annuities are not exposed to money laundering because the actual payment is uncertain and can be very limited compared to the money paid for an annuity. Therefore annuities are not particular vulnerable for money laundering purposes, and Insurance Europe therefore suggests deleting this bullet point.</p> <p>Furthermore, Insurance Europe would like to stress that the life insurance sector present only a low risk for money laundering and the non-life industry even more. Insurance Europe believes this should be highlighted in the IAIS application paper.</p>	
Insurance Europe	10	<p>Insurance Europe suggests making a clear distinction between money-laundering and fraud, as their characteristics and consequences are different. Laundering money as the motive behind insurance fraud is not realistic, as the money that collected as pay-out from an insurance contract would still be the result of a criminal event</p> <p>In general, for money-laundering to be successful, the money paid to the institution must have high cash value, or should result in huge cash values. Furthermore, the money that is paid by the institution back to the criminal must also contain a high cash value, while the probability that the criminal will receive his money must be high. The fact that in non-life insurance the premiums paid are generally low and the probability of the insured event is minimal means that the risk of using non-life insurance policies for the purpose of money laundering is very low.</p> <p>Insurance Europe therefore believes that only the third and fourth bullet points should be considered as examples of money-laundering through the non-life insurance business:</p> <ul style="list-style-type: none"> • The first bullet point is a typical example of fraud, without 	

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		<p>interaction with money laundering.</p> <ul style="list-style-type: none"> • The second bullet point applies only to illegal money paid into a fire assurance. However, one must keep in mind that premiums paid for fire insurances are generally low and the chance that the insured event happens is rather small. The pay-out is thus unlikely to occur. Therefore, fire assurance policies without a surrender option are typically not used for money-laundering and should therefore not be included. • The last bullet point is neither an example of fraud nor of money-laundering. 	
Insurance Europe	11	<p>According to Insurance Europe, the characteristics of ML and TF are different. For example, in ML the crime will precede the financial transaction, whereas in TF the financial transaction will most likely precede the crime.</p> <p>Insurance Europe wishes to stress that there are limited specific indicators to assist life insurers in the detection of terrorist financing activities. Therefore, Insurance Europe considers it appropriate to further increase the understanding of how the life insurance sector can be exposed to terrorist financing activities, and how information can be used effectively to combat terrorism.</p>	
Insurance Europe	12 and 37	Please remark that the FATF recommendations do not include reinsurance in its scope. We therefore suggest deleting these paragraphs.	
Insurance Europe	43	In some member states, national identity cards contain more information than passports. In these member states, national identity cards are more acceptable than passports. Therefore, Insurance Europe suggests deleting “ <i>in descending order of acceptability</i> ”.	
Insurance Europe	57	The terms “geographic risk factor” and “credible sources” are both quite vague. In practice, it might be difficult to determine when a source is credible. Insurance Europe therefore suggests adding non-restrictive examples of credible sources.	
Insurance Europe	58	Currently, on-face-to-face business is defined as those businesses using internet, telemarketing, or other electronic means of communication.	

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		<p>However, Insurance Europe would suggest defining it as follows to avoid a classification of certain business as non-face-to-face. Non-face to-face business is defined as the carrying out of an insurance contract, without the simultaneous physical presence of the insurer or intermediary and the consumer, by making exclusive use of one or more of the internet, telemarketing or other electronic means of communication up to and including the time at which the contract is concluded.</p>	
Insurance Europe	74	<p>Insurance Europe acknowledges that the FATF Recommendations require financial institutions to terminate a business relationship in case it is unable to comply with the prescribed verification requirements. This raises problems for insurance companies, as for insurance companies it is not always possible to close business relationships due to social law or insurance regulation. Moreover, this would imply that the insurance company pays out the contract to the policyholder which works counterproductive in case money laundering would have been the purpose of the policyholder.</p>	