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Draft consultatiereactie draft RTS on cross-border information exchange between FIU's

Consultation on the draft Regulatory Technical Standards on cross-border information exchange between Financial Intelligence Units

Koninklijke Nederlandse Beroepsorganisatie van Accountants

NBA

Question 1 To what extent has an appropriate balance been achieved between mitigating the risk of overburdening the receiving FIU with a high volume of information of limited or uncertain relevance, and ensuring the prompt and effective transmission of reports concerning another Member State?

If this balance is not considered adequate, please:
(i) suggest corrective measures to better align these objectives within the framework of relevance and selection criteria;
(ii) specify the provisions concerned; and
(iii) provide concrete drafting proposals and explain why the specific measures you propose would be more appropriate

This question primarily concerns operational considerations for FIUs. As a professional body representing accountants rather than FIUs, we do not consider ourselves sufficiently placed to provide an informed assessment of this particular question.

Question 2 Do you consider the shift in responsibility for assessing the relevance criteria from the transmitting FIU to the receiving FIU to be effective?

If not, please:
(i) explain why and indicate how the assessment of relevance criteria could be organised to better reflect the specificities of each jurisdiction;
(ii) specify the provisions concerned; and
(ii) provide concrete drafting proposals and explain why the specific measures you propose would be more appropriate.

We generally support the allocation of responsibility to the receiving FIU for assessing relevance, as the receiving FIU is best placed to evaluate information in light of its national risk framework, intelligence holdings and operational priorities.
However, the effectiveness of this model depends heavily on the quality of the information selected for transmission in the first place. We are concerned that the draft RTS places exclusive reliance on predefined automated selection criteria, which are not always available for non-FS OE's.

While harmonised and automatable criteria can promote consistency, they may not always capture the contextual factors that make information relevant to another FIU. For example, the residence of a counterparty, the destination or origin of funds, the location of underlying activities, or other risk indicators emerging from the analysis may be more relevant than the customer's residence, nationality or place of birth.
Moreover, some of the prescribed selection criteria rely on information that may not be available or routinely collected by the obliged entity. Examples include nationality, country of birth or the issuing country of an identity document of the primary subject. As a result, a potentially relevant case may fail to trigger transmission under the proposed framework, even though other indicators suggest that another FIU may have a significant interest in the information.
For these reasons, we believe that a combination of harmonised automated criteria and other objective criteria would better support the objective of exchanging genuinely relevant information while reducing the risk of both over-sharing and under-sharing.
In addition, we encourage AMLA to explore a sophisticated learning cycle, allowing FIUs to draw on operational experience and feedback to progressively enhance the effectiveness and relevance of the information-sharing criteria over time.

Question 3 Do you consider the criteria identified for defining the primary subject to be sufficiently comprehensive?

If not, please indicate which additional criteria should be included to capture scenarios not currently addressed.
Where possible, please support your response with concrete examples and proposed drafting of the revised provision.

We are not fully convinced that the proposed criteria for defining the primary subject are sufficiently appropriate for all categories of obliged entities. The concept appears to be largely designed from the perspective of financial institutions, where account relationships and transaction data are readily available.
In particular, the financial ranking criterion may be difficult to apply in practice for many non-financial obliged entities. The ranking is based on the percentage of transactions and transaction values associated with a subject, resulting in a score from 1 to 5. While this may be suitable for institutions that routinely maintain detailed transaction data, many non-financial obliged entities do not operate on the basis of accounts and transaction flows in the same way. As a result, the criterion may be less meaningful or more difficult to apply consistently outside the financial sector.
We therefore encourage AMLA to reconsider whether the proposed definition of primary subject and the associated criteria are sufficiently suitable for all categories of obliged entities.

Additional input
Do you have any comments on a specific article in the draft RTS? There is no need to repeat comments made in the previous sections of this survey.
O Yes
o No

Do you have any comments on the recitals? The recitals are the statements at the start of the draft RTS and are numbered from (1) to (11).
O Yes
o No

Do you have any comments on the Annex in the draft RTS?
O Yes
o No

Overall assessment

* Question How would you rate the proposals set out in the draft RTS overall?

- o Inadequate
- **o Somewhat inadequate**
- o Neutral
- o Good
- o Excellent

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