

**Restrictions for bearer shares :  
Exemption for companies listed on a  
regulated market needed !**

Deutsches Aktieninstitut appreciates the opportunity to contribute to the ongoing consultation of the Financial Action Task Force (FATF) on potential amendments to Recommendation 24 on the transparency and beneficial ownership of legal persons.

Deutsches Aktieninstitut represents large German non-financial companies, whose perspective is taken in the response below. Our contribution will be confined to potential amendments of Recommendation 24 on bearer shares (questions 14 and 15) :

#### Questions:

14. *Should issuance of new physical bearer shares without any traceability be prohibited?*
15. *Should existing physical bearer shares be immobilised or converted?*

#### Response:

Deutsches Aktieninstitut does not deem it appropriate to prohibit the issuance of new physical bearer shares (question 14), at least if those bearer shares are issued by a company listed on a regulated market. Even if they are issued by a company that is not listed on a regulated market, we do not see the need of a prohibition. The same holds to true for the suggestion to immobilise or convert existing physical bearer shares (question 15).

We thus ask for an exemption from the suggested restrictions/prohibition at least for companies listed on a regulated market issuing bearer shares. We also ask to re-consider the appropriateness of those measures for bearer shares of non-listed companies, if those shares are maintained in a collective securities account that is being held by a depository bank (see more below).

First of all, the consultation lacks an impact assessment that explains (with empirical evidence) why bearer shares pose an elevated money laundering risk that requires regulatory action. Secondly, no explanation is provided as to why the restrictions or prohibition suggested above would help the combat against money laundering. Would such restrictions facilitate the detection of money launderer? Would such restrictions prevent money laundering? Because of the lack of a proper impact assessment, we also miss proportionality reflections on whether other measures being less drastic would be equally suited to fight money laundering in this area.

We believe that scepticism vis-a-vis bearer shares is not warranted when it comes to companies listed on a regulated market. Listed companies that issue bearer shares do not pose any specific elevated risk for money laundering

activities. Those companies are submitted to rigid capital markets transparency/disclosure requirements that ensure adequate ownership information. For instance, in the realm of the European Union, the Markets in Financial Instruments Directive (MiFID II), the Markets in Financial Instruments Regulation (MiFIR) and the Transparency Directive ensure that transparent information on the ownership structure is being provided on a constant basis. This most importantly via setting shareholding/voting rights thresholds that trigger notification obligations.

Companies listed on a regulated market issuing bearer shares are moreover subject to strict public and supervisory scrutiny, which further reduces money laundering risks.

Against the background of the arguments above, EU Directive 2015/849 article 3(6)(a)(i) rightfully exempts listed companies issuing bearer shares from enhanced identification requirements. This is upheld in the recently published proposal for an EU regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 2021/0239 (COD)<sup>1</sup>.

Even for bearer shares of companies not listed on a regulated market, a prohibition of the issuance of new physical bearer shares seems undue and disproportionate. Other than stated in question 14 of the FATF consultation, those bearer shares and its beneficial owner can be traced, if the shares are maintained in a collective securities account that is being held by a depository bank. In Germany for instance, depository banks are required by law to submit information on the ultimate beneficial owner to tax authorities. This information is viable information under the anti-money laundering perspective and should hence be used in this context by the competent authorities.

Last, the FATF should also take into account cross-sectoral ramifications of the suggested measures. They would make the issuance of bearer shares less attractive for listed companies. Bearer shares are however classes of shares that are commonly used across various jurisdictions as they offer features that can benefit both issuers and shareholders. Before taking any steps, the impact of the suggested measures on the capital markets ecosystem should be assessed and more proportionate measures be envisaged.

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<sup>1</sup> See Article 58 paragraph 3 of draft regulation, [https://ec.europa.eu/finance/docs/law/210720-proposal-aml-cft\\_en.pdf](https://ec.europa.eu/finance/docs/law/210720-proposal-aml-cft_en.pdf).

## Contact

Maximilian Lück  
Head of EU Liaison Office  
Deutsches Aktieninstitut e.V.  
EU Liaison Office  
Rue Marie de Bourgogne 58  
B-1000 Bruxelles  
Phone +32 2 7894101  
Fax +32 2 7894109  
E-Mail [lueck@dai.de](mailto:lueck@dai.de)  
[www.dai.de](http://www.dai.de)

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