

Addressing enablers

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FACTI ISSUES NOTE

The FACTI Panel published its [interim report](#) on 24 September 2020.

The FACTI Panel will hold a series of high-level virtual regional consultations with global stakeholders from 9 to 23 November 2020. The consultations aim to discuss possible means to address the shortcomings identified in the interim report. To orient the consultations a series of short issues papers are being presented along with guiding questions for the consultations.

INTRODUCTION

Haven countries are typically those with high levels of stability and wealth, where the corrupt and other criminals can enjoy the proceeds of their crimes. These are most frequently developed countries or other high-income countries. The increasingly sophisticated techniques to disguise illicit transactions are designed by lawyers, accountants, financial institutions and other enablers. Networks of enablers are also frequently found in the same haven countries.

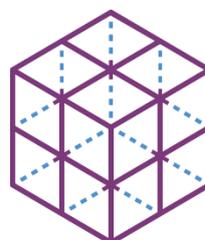
More than 200 jurisdictions are implementing the Financial Action Task Force (FATF) recommendations against money laundering, placing compliance requirements on a wide range of businesses. Yet governments in haven countries have little incentive to block the inflow resulting from tax abuses, corrupt practises and other crimes. Banks find it profitable, and other enablers such as lawyers and accountants often operate without effective oversight.

Vested interests, such as banks and other enablers, may have power to influence national policies and also may wield disproportionate influence in international settings. Small businesses and local civil society organisations do not have as much

capacity to sway either domestic policy and enforcement or international norm setting processes.

FATF Recommendations require a broad range of preventative measures, including customer due diligence, record keeping, beneficial ownership, international cooperation, and suspicious transaction reporting. Financial institutions and designated non-financial businesses and professions (DNFBPs) are expected to adhere to standards to counter money laundering and the financing of terrorism (AML/CFT) set by the FATF. Countries are expected to take a risk-based approach to implementation of the FATF Recommendations, meaning that national rules should evolve to mitigate risks as they develop.

Private enterprises are bound to comply with all applicable laws and to respect human rights. The Guiding Principles on Business and Human Rights specify that businesses are responsible both for direct impacts of their activities and for potential adverse human rights impacts resulting from their business relationships. This would apply to professional service providers; their



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facilitation of money-laundering, tax avoidance and tax evasion; and the ultimate impacts of these activities on the ability of the States to raise resources to fulfil human rights obligations.

The Panel has identified the following gaps and impediments to accountability in addressing enablers:

- Gaps in which enablers are regulated and supervised;
- Abuse of legal privilege;
- Gaps in enforcement and application of sanctions;
- Unaligned incentives for banks;
- Political capture that weakens regulatory and supervisory regimes;
- Lack of capacity to use information submitted by enablers; and
- Insufficient involvement of non-state actors and whistleblower protections in the home jurisdictions of enablers.

Further details on the high-level regional consultations can be found on the FACTI Panel website: <http://www.factipanel.org/events>.

LOOKING FORWARD

The Panel will examine measures needed in the countries used as havens, or where enablers of corruption and tax abuse work, building ideas in advance of the forthcoming FATF strategic review. Coherence with the tax transparency norms will be important, as well as better regulation and supervision.

Guiding question for the consultations:

- **How can international-level action improve the effectiveness of the application of anti-money-laundering standards to lawyers, accountants and other designated non-financial businesses and professions (DNFBPs)?**
- **How can financial institutions more effectively ensure financial integrity and what accountability measures need to be in place given the failures to prevent money-laundering?**

