

A PROPOSAL FOR A GLOBAL DATABASE OF POLITICALLY EXPOSED PERSONS

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As part of the global effort to combat public corruption, anti-money laundering laws require financial institutions and other entities to conduct enhanced scrutiny on so-called “politically exposed persons” (PEPs)—mainly senior government officials, along with their family members and close associates. Unfortunately, the current system for identifying PEPs—which depends entirely on a combination of self-identification, in-house checks, and external private vendors that rely on searches of publicly available source material—is both inefficient and in some cases inaccurate. We therefore propose the creation of a global PEP database, organized and overseen by an inter-governmental body. This database would be populated with data compiled by national governments, drawing primarily on the data those governments already collect pursuant to existing financial declaration systems for public officials. A global PEP database along the lines we propose has the potential to make PEP identification more accurate and more efficient, reducing overall compliance costs and allowing compliance resources to be used more productively.

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INTRODUCTION

The modern anti-money laundering (AML) framework¹ requires banks and other financial gatekeepers conduct enhanced due diligence—that is, more rigorous background checks and greater ongoing scrutiny—when dealing with customers who are considered “high risk.”² One of the most significant requirements in this context is the obligation to scrutinize so-called “politically exposed persons” (PEPs). PEPs—senior politicians and public officials, as well as their close relatives and associates—are considered high-risk customers, from an AML perspective, principally because they have the opportunity to acquire substantial assets through corrupt activities, such as bribe-taking, embezzlement, and the misuse of confidential government information for personal gain.³ Indeed, the International Monetary Fund (IMF) estimates that much, perhaps most, of the money laundered worldwide is derived from corruption,⁴ and many of the biggest money laundering scandals of recent years have, to varying extents, involved corrupt politicians and public officials.⁵ So it makes sense, from a regulatory perspective, to require so-called “obliged entities” (that is, the financial institutions and other entities obligated to comply with AML rules) to ascertain whether a current or prospective client is a PEP, and if so to apply enhanced due diligence.⁶

Unfortunately, the current system for identifying PEPs is both inefficient and inaccurate. In the absence of an official list of PEPs, obliged entities must rely on self-identification (that is, asking clients whether they are PEPs), coupled with in-house checks by the obliged entities and PEP screening services provided by external private-sector vendors. Both the in-house checks and the outside screeners rely on searches of publicly available source material. These searches are resource-intensive, and even though scraping public data to identify PEPs probably does a reasonably good job in most cases, this information is sometimes incomplete, inaccurate, or outdated.⁷

¹ By the AML “framework,” we mean the global system of international standards, national laws, and transnational inter-governmental networks that collectively pursue AML objectives.

² See *infra* Part I-A.

³ See THEODORE S. GREENBERG ET AL., POLITICALLY EXPOSED PERSONS: PREVENTIVE MEASURES FOR THE BANKING SECTOR 3 (2010).

⁴ See Ad Hoc Comm. for the Negotiation of a Convention Against Corruption, Global Study on the Transfer of Funds of Illicit Origin, Especially Funds Derived from Acts of Corruption, on its Fourth Session, ¶¶ 7–12, U.N. Doc. A/AC.261/12 (Nov. 28, 2002). Admittedly, estimates of the magnitude of illegal activity of this sort are problematic and should be used with caution. See, e.g. PETER REUTER & EDWIN M. TRUMAN, CHASING DIRTY MONEY: THE FIGHT AGAINST MONEY LAUNDERING 9–23 (2004).

⁵ Examples include the ABLV Bank case, the Danske Bank case, and ING Bank case. See Toby Sterling & Bart H. Meijer, *Dutch Bank ING Fined \$1.18 Billion for Failing to Spot Money Laundering*, REUTERS (Sept. 4, 2018), <https://www.reuters.com/article/us-ing-groep-settlement-money-laundering/dutch-bank-ing-fined-900-million-for-failing-to-spot-money-laundering-idUSKCN1LK0PE>; Financial Crimes Enforcement Network, *FinCEN Names ABLV Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure* (Feb. 13, 2018), <https://www.fincen.gov/news/news-releases/fincen-names-ablv-bank-latvia-institution-primary-money-laundering-concern-and>; Juliette Garside, *Is money-laundering scandal at Danske Bank the largest in history?*, GUARDIAN (Sept. 21, 2018), <https://www.theguardian.com/business/2018/sep/21/is-money-laundering-scandal-at-danske-bank-the-largest-in-history>.

⁶ The extent of the due diligence applied to customers identified as PEPs may differ across jurisdictions, with most jurisdictions allowing some form of “risk-based approach.” See GREENBERG ET AL., *supra* note 3, at 23–24.

⁷ See *infra* Part I-C.

We propose the creation of a global PEP database, populated with data gathered by national governments, as a supplement to the existing approach to PEP identification. This is not a wholly original idea.⁸ Indeed, various proposals in to create an international database of PEPs have been floated before, but so far have not met with much favor. A 2010 World Bank report on PEPs, for example, raised the idea only to dismiss it in a single paragraph.⁹ But the idea has continued to attract adherents, and our goal in this article is to move the discussion forward by laying out and defending a more detailed proposal for a global PEP database.

The database that we advocate would be organized and overseen by an inter-governmental body—we tentatively suggest it should be the Financial Action Task Force (FATF), though this is not central to our argument—and would be assembled from domestic PEP databases compiled by national governments, drawing primarily on the data that those governments already collect from public officials as part of existing income and asset declaration systems. Access to the global PEP database would be restricted to law enforcement agencies and carefully vetted private firms—principally obliged entities and firms that provide PEP identification and screening services.¹⁰ Such a model has the potential to make identification of PEPs more accurate and to reduce overall screening costs, which in turn allows firms to use their compliance resources more productively. To be clear, a global PEP database would not eliminate the need for obliged entities and outside vendors to conduct additional screening. But that screening could be more targeted, and more efficient, if there were a common, reliable, continuously-updated database that covered most PEPs.

The article is organized as follows. Part I provides some background on the development of the AML regulatory framework, the emergence of the concept of PEP screening, the current approach to conducting such screening, and its drawbacks. Part II turns to our proposal for a centralized PEP database, assembled from national-level PEP lists compiled principally using public officials' financial declarations. A brief conclusion follows.

⁸ Sungyong Kang, who previously served as a South Korean police inspector, advanced what is probably the most sustained treatment of this issue in a 2018 article that argued governments should collect domestic PEP information and share it with financial institutions. Sungyong Kang, *Rethinking the Global Anti-Money Laundering Regulations to Deter Corruption*, 67 INT'L & COMP. L.Q. 695, 703 (2018).

⁹ GREENBERG ET AL., *supra* note 3, at 35.

¹⁰ Given the large number of such companies, it is natural to ask whether it would be feasible to maintain an appropriate vetting system. While this is a reasonable concern, it is not insurmountable. For one thing, vetting obliged entities for access to the global PEP database could be incorporated into their home country's existing process for licensing financial institutions, similar to how financial institutions currently get access to different state registries or information systems as part of the existing licensing process. Private vendors providing screening services are not themselves financial institutions and so would not be covered by these existing licensing systems, but the number of these entities would likely be small enough for case-by-case vetting by a designated national institution.

I. THE CURRENT SYSTEM

A. *The AML Framework and the Emergence of PEP Screening*

The modern AML legal regime emerged, both at the national and international level, between the mid-1980s and the early 1990s principally as a tool to combat drug trafficking. While concerns about money laundering prompted some efforts toward financial industry self-regulation beginning in the late 1970s,¹¹ and the Council of Europe issued some recommendations related to measures against the transfer of criminal funds in 1980,¹² it was not until 1986 that the United States became the first country to criminalize money laundering.¹³ An international AML regime began to take shape over the next few years. In 1988, the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) obligated State Parties to criminalize activities related to laundering the proceeds of illegal drug sales;¹⁴ that same year, the Basel Committee on Banking Supervision published guidance regarding the obligations of banks to know their customers, avoid suspicious transactions, and cooperate with law enforcement.¹⁵ Then in 1989, the G-7 countries, the European Commission, and eight other countries jointly created FATF, an organization tasked with developing a set of common AML standards.¹⁶ FATF promulgated these standards, the so-called “FATF Forty Recommendations,” in 1990.¹⁷ These recommendations, though non-binding, have become the global standard for national AML regulation. The European Union (EU) issued its First AML Directive in 1991; that Directive essentially required EU member states to integrate the FATF Recommendations into their national laws.¹⁸

Heightened due diligence for PEPs was not part of the discussion during this early period. Indeed, the term PEP had not yet been coined. The reason for this omission is likely that this first wave of AML regulation was focused primarily on the illegal drug trade, and to a somewhat lesser extent on other illicit markets (such

¹¹ For example, the Swiss Bankers Association adopted a code of conduct in 1977 in the wake of Chiasso banking scandals. See REUTER & TRUMAN, *supra* note 4, at 80.

¹² Council of Europe, Recommendation No. R(80)10 of the Committee of Ministers to Member States on Measures Against the Transfer and the Safekeeping of Funds of Criminal Origin, (Adopted by the Committee of Ministers to Member States on 27 June 1980 at the 321st meeting of the Ministers’ Deputies). These recommendations focus on issues such as client identification, recognition of potentially criminal behavior, and international cooperation.

¹³ 18 U.S.C. § 1956. See also Tim Krieger & Daniel Merierrieks, *Terrorism: Causes, Effects and the Role of Money Laundering*, in RESEARCH HANDBOOK ON MONEY LAUNDERING 78, 80 (Brigitte Unger & Daan Van Der Linde eds., 2013).

¹⁴ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1582 U.N.T.S. 95, art. 3, ¶ b. The inclusion of money laundering was one of the most controversial points in an already controversial convention. See Mark T. Nance, *The Regime that FATF Built: An Introduction to the Financial Action Task Force*. 69 CRIME, LAW & SOCIAL CHANGE 109, 114 (2018).

¹⁵ See REUTER & TRUMAN, *supra* note 4, at 80.

¹⁶ See Ronald K. Noble & Court E. Golumbic, *A New Anti-Crime Framework for the World: Merging the Objective and Subjective Models for Fighting Money Laundering*, 30 NYU J. INT’L L. & POL. 79, 117–18 (1997–98).

¹⁷ See Financial Action Task Force, *The Forty Recommendations of the Financial Action Task Force on Money Laundering* (1990).

¹⁸ Council Directive 91/308/EEC, 1991 O.J. (L166) 79–80 (EC).

as weapons) and private sector fraud, rather than on public corruption. It is probably no coincidence that the Vienna Convention was the first international treaty to explicitly address money laundering, a fact that “reinforced the narrow framing of money laundering as a by-product only of the illicit drug trade.”¹⁹ Likewise, while there is no published information on the drafting history of the first version of the FATF Forty Recommendations,²⁰ the introduction to FATF’s first annual report makes clear that concern over drug trafficking was driving the process.²¹ Given this focus on drug traffickers, and the apparent lack of attention to money laundering by corrupt public officials, it is understandable that the AML framework that emerged during this period did not focus on PEPs.

But while the AML framework originally emerged as a complement to the drug war, money laundering is associated with a wide range of other organized criminal activities. It is thus unsurprising that over time, the AML framework came to be seen as an important element in the fight against other forms of transnational crime, including security threats like terrorist financing and WMD proliferation.²² Most relevant for present purposes, over the course of the 1990s, as concerns about public corruption became more salient, there was increasing pressure on the international AML regime to address the money laundering risks associated with politicians, public officials, and their close family members and associates—the people we would now call PEPs.²³

The view that financial institutions should apply heightened due diligence to PEPs solidified in the early 2000s. In 2001, the Basel Committee on Banking Supervision published a Consultative Document on Customer Due Diligence for Banks; this document declared that “potentates”—individuals holding important public positions, along with their close relatives—are high-risk customers that should be carefully screened and, if taken on as customers, carefully monitored.²⁴ Then in 2003, two significant developments firmly established enhanced due diligence for PEPs as a central feature of the international AML regime. First, the United Nations Convention Against Corruption (UNCAC)—which was adopted in 2003 and entered into force in 2005—included, in Article 52, an express provision obliging each State Party to “require financial institutions within its jurisdiction . . . to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and

¹⁹ Nance, *supra* note 14, at 114.

²⁰ See CECILY ROSE, INTERNATIONAL ANTI-CORRUPTION NORMS: THEIR CREATION AND INFLUENCE ON DOMESTIC LEGAL SYSTEMS, app. II, at 234 (2015).

²¹ See Nance, *supra* note 14.

²² See *id.* at 116.

²³ One important catalyst was the U.S. congressional investigation into evidence that Citibank Private Bank’s U.S. branch had helped high-ranking foreign government officials and their family members transfer very large sums of money of dubious origin. See Jeff Gerth, *Under Scrutiny: Citibank’s Handling of High-Profile Foreigners’ Accounts*, N.Y. TIMES (July 27, 1999), <https://www.nytimes.com/1999/07/27/world/under-scrutiny-citibank-s-handling-of-high-profile-foreigners-accounts.htm>; *Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities. Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. U.S. Senate*, 106th Cong. 889–934 (1999).

²⁴ Basel Committee on Banking Supervision [BCBS], *Consultative Document: Customer Due Diligence for Banks*, at 10, ¶ 5(h) (Mar. 31, 2001).

close associates.”²⁵ Second, during the 2003 review and revision of the FATF Forty Recommendations, FATF included for the first time the specific term “politically exposed person,” along with a definition of that term and an explicit recommendation that financial institutions establish appropriate risk management procedures to determine the PEP status of their customers and to take special measures for dealing with such customers. Those special procedures included requiring senior management approval for establishing business relationships with PEPs, taking “reasonable measures” for identifying the source of a PEP’s assets, and conducting “enhanced ongoing monitoring of the business relationship” with a PEP.²⁶ In 2005, the EU, again following FATF’s lead, issued its Second AML Directive, which (among other things) called for a risk-based approach to AML that included enhanced due diligence procedures for specific groups of persons, including PEPs.²⁷

There have been a few additional refinements more recently. For example, while the 2003 FATF Forty Recommendations defined PEPs narrowly as officials of *foreign* governments, the current version of the FATF Forty Recommendations (last updated in 2019) expands the PEP category to include senior *domestic* government officials, as well as individuals with a prominent function in an international organization.²⁸ And the EU’s Fourth AML Directive, adopted in 2015, instructed that PEP status should continue to apply to a customer for 12 months after the person no longer holds a prominent public function.²⁹

Thus the fundamentals of the AML framework were designed without corruption or PEPs in mind, and the requirements for screening and scrutinizing PEPs were grafted onto an AML framework that was originally developed for a different

²⁵ U.N. Convention Against Corruption art. 52, § 1, Oct. 31, 2003, 2349 U.N.T.S. 41 (hereinafter UNCAC). UNCAC Article 52 further instructs each State Party, in accordance with its domestic law, to “issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny,” and, where appropriate, to “notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.”

²⁶ Financial Action Task Force, *The Forty Recommendations of the Financial Action Task Force on Money Laundering* 3-4 (Recommendation 6) (2003) (hereinafter 2003 FATF Forty Recommendations). The accompanying consultation paper makes clear that the revisions respond to requests from the G20 leaders that FATF “help deter and detect corruption.” Financial Action Task Force, *Consultation Paper. The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations* (2010).

²⁷ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, O.J. (L309) 15 (hereinafter 2nd EU AML Directive). The Directive also noted explicitly that the need to apply enhanced due diligence is justified by “the international effort to combat corruption.” The standard for enhanced due diligence on PEPs was set forth in Article 13 and was almost identical to the relevant provision in the 2003 FATF Forty Recommendations.

²⁸ Financial Action Task Force, *The Forty Recommendations of the Financial Action Task Force on Money Laundering* (2019) (hereinafter 2019 FATF Forty Recommendations).

²⁹ Directive (EU) 2015/849, of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC, of the European Parliament and of the Council and Commission Directive 2006/70/EC, Art. 22 (O.J. L141/73, 5.6.2015) (hereinafter 4th EU AML Directive). The most recent EU AML Directive (the Fifth) does not provide a new definition of PEPs. Directive (EU) 2018/843, of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849, on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU PE/72/2017/REV/1 (O.J. L156/43, 19.6.2018).

sort of problem. Moreover, when enhanced due diligence for PEPs became part of the picture, the obliged entities were not given any additional tools to help them identifying PEPs.³⁰

B. *Defining and Identifying PEPs*

Although many laws and conventions now require obliged entities to conduct enhanced due diligence on PEPs, there is not a single universally accepted definition of who counts as a PEP. The 2003 revisions to the FATF Forty Recommendations were accompanied by an official supplement that defined PEPs as “individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.”³¹ The supplement further clarified that the limitation to those with “prominent public functions” excluded middle-ranking or junior officials. As noted above, the current version of the FATF Forty Recommendations covers domestic as well as foreign PEPs—providing separate (though similar) definitions for each—as well as senior officials at international organizations.³² The EU’s Second AML Directive, adopted shortly afterwards, uses a broadly similar (though not identical) definition, stating that PEPs are natural persons who “are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.”³³ The EU’s Fourth AML Directive elaborates on that definition by providing a list of examples of “prominent public functions,” as well as clarifying the family members who are covered, and further defining “close associates” as natural persons who either “are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person” or “have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.”³⁴ The EU’s Fifth AML Directive, adopted in 2018, took an additional step toward clarifying the scope of the PEP category by requiring each EU Member State to issue a list “indicating the specific functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions.”³⁵ The Directive also required Member States to request that the international organizations accredited in their territories “issue and keep up to date a

³⁰ Some countries have provided guidance to obliged entities on how to perform enhanced scrutiny, but these guides lack concrete advice on how to correctly identify PEPs in the first place. *See, e.g.*, U.S. DEP’T OF TREASURY ET AL., Guidance on Enhanced Scrutiny for Transactions that May Involve the Proceeds of Foreign Official Corruption (2001), <https://www.treasury.gov/press-center/press-releases/Pages/guidance.aspx>.

³¹ 2003 FATF Forty Recommendations, *supra* note 26.

³² *See* 2019 FATF Forty Recommendations, *supra* note 28.

³³ 2nd EU AML Directive, *supra* note 27, Art. 3, para. 8.

³⁴ 4th EU AML Directive, *supra* note 29, Art. 3, para. 9–11.

³⁵ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (O.J. L156/43 19.6.2018) (hereinafter 5th EU AML Directive) at para 23.

list of prominent public functions at that international organization.”³⁶ Intergovernmental organizations and private entities have developed their own PEP definitions and guidelines similar to these international standards.³⁷

So, there is some variation in the PEP definition used in different contexts, an issue we shall return to later. But assuming for the moment an obliged entity has been able to ascertain the applicable PEP definition, how is that obliged entity supposed to figure out which of its current or potential customers are PEPs?

The first step in many cases is to require all prospective customers to answer a series of questions that includes a question about PEP status. However, self-identification is often unreliable. The definition of a PEP is sufficiently complicated and open-ended that some PEPs may not realize they are PEPs. And of course some PEPs may deliberately lie so as to avoid enhanced diligence or other consequences. This is especially likely when the PEP intends to engage in illicit activity and would prefer to avoid scrutiny. While some jurisdictions make it a crime to make a false statement on the questionnaire,³⁸ we are unaware of any cases where an individual was held legally accountable for failing to accurately self-identify as a PEP.

The inadequacy of self-identification means that obliged entities must rely, for PEP identification, on a combination of two approaches. First, obliged entities can conduct their own checks, typically using ad hoc searches in publicly accessible resources (Google, LinkedIn, etc.), possibly building up their own internal PEP databases in the process. Second, obliged entities can contract with one of the private companies that provide PEPs identification and screening services. And where do these private providers get their information? None of them state this clearly, but it is likely that they also rely on searches of publicly available data sources.³⁹ In part because of the opacity in how these firms compile their PEP lists, and the absence of any form of oversight, both FATF and the World Bank recommend that financial institutions maintain in-house analyses even when they are using these external vendors.⁴⁰

C. Disadvantages of the Current PEP Screening System

The current approach to PEP screening is excessively costly.⁴¹ Since most obliged entities rely on external vendors for PEPs identification and screening, they

³⁶ *Id.*

³⁷ See, e.g., Basel Committee on Banking Supervision, *Sound Management of Risks Related to Money Laundering and Financing of Terrorism* (June 2017), <https://www.bis.org/bcbps/publ/d405.pdf>; Wolfsberg Group, *Wolfsberg Guidance on Politically Exposed Persons (PEPs)* (2017), <https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/4.%20Wolfsberg-Guidance-on-PEPs-May-2017.pdf>.

³⁸ See GREENBERG ET AL., *supra* note 3, at 37–38.

³⁹ We reviewed the websites of the major service providers in this market, including Wealth-X, Comply Advantage, Accuity, Global Radar, BAE Systems, RDC, Dow Jones, SAS Anti-Money Laundering, and Thomson Reuters, and followed up with email inquiries. When responding to one of these inquires, Dow Jones confirmed that their “PEP content is based exclusively on the information extracted from publicly available sources,” but declined to elaborate. Email from Dow Jones Customer Service, responding to an online inquiry (received Apr. 2, 2019). Most other providers did not respond to our queries.

⁴⁰ See Kang, *supra* note 8, at 705.

⁴¹ There is virtually no reliable data on how much the private sector spends to comply with AML regulations. Not only is it hard to distinguish the costs associated with AML specifically from the costs

have to purchase access to the databases. The prices of these services are not disclosed, but bank representatives from various countries report that these costs, along with maintenance and related additional costs, consume a significant fraction of their compliance budgets. And since obliged entities have been cautioned not to rely exclusively on external vendors for PEP screening, the obliged entities also need to maintain sufficient compliance staff to do additional checks and follow-up. While few people would wring their hands over big banks having to spend more money on compliance, this is a context where excessive or wasteful spending may have significant social costs. Such spending spreads compliance resources too thin and thereby weakens other aspects of the obliged entity's AML compliance system.

Furthermore, the current system is not only resource-intensive, but it likely suffers from significant inaccuracies. PEP identification may be straightforward in some cases—it is not hard to identify a country's president or prime minister is, for example—but accurately identifying less prominent PEPs can be challenging, especially for positions with high turnover. Reliance on publicly available source material may therefore be insufficient. Inaccuracies can take the form of both “false negatives” (PEPs who fail to self-identify and who are not flagged as PEPs by the obliged entities or their external PEP screeners) and “false positives” (individuals who are incorrectly flagged as PEPs).

The false negative problem is likely the more significant concern from an AML perspective. It is impossible to know for sure how serious a problem it is, but past investigations have identified at least some cases in which private firms have failed to correctly flag PEPs.⁴² Typically false negatives would go undetected unless the customer gets caught up in an investigation, or an internal audit catches the error.⁴³ So the problem may be much more widespread than we know.

The current system is also likely to generate many “false positives.” This may occur when an individual has the same or similar name as a PEP, or when the screeners rely on outdated sources. The costs of false positives, while not as great as the costs of false negatives, are not negligible. First, the individuals wrongly flagged as PEPs are burdened, though this burden is usually relatively modest. Contrary to the hyperbolic claims that those mislabeled as PEPs are “unfairly treated as criminals,”⁴⁴ a PEP classification usually means only that a person will be subjected to enhanced due diligence.⁴⁵ Mistaken inclusion on a PEP list is therefore not nearly as consequential as mistaken inclusion on a sanctions list.⁴⁶ That said, some financial institutions avoid doing business with high-risk customers altogether, a defensive

allocated to compliance in general, but much of the data even on overall compliance spending is not public. See REUTER & TRUMAN, *supra* note 4, at 98–101.

⁴² UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES 6, 143–50, 159, 188, 213–14 (Comm. Print 2010), <https://www.hsgac.senate.gov/imo/media/doc/FOREIGNCORRUPTIONREPORTFINAL710.pdf>.

⁴³ The findings of such audits remain confidential, so outside researchers cannot use this data to estimate the extent of the false negative problem.

⁴⁴ Kang, *supra* note 8, at 703.

⁴⁵ As the High Court of South Africa recently put it, in rejecting a claim that inclusion in a private vendor's PEP list was defamatory, “there is no presumption whatsoever that merely listing a person as a PEP renders them suspect. . . . [T]he listing of [the plaintiff] as a PEP provides no reason to regard [him] any differently from the Queen of England, who is also, I am told, a PEP.” *Kassel v. Reuters* 2019 (1) SA 251 (GJ) at ¶ 18 (S. Afr.).

⁴⁶ See Kang, *supra* note 8, at 715.

strategy known as “de-risking,”⁴⁷ and occasionally this may lead banks to avoid doing business with PEPs. The most extreme example of this is JPMorgan’s 2014 decision to close 3,500 accounts of current and former non-U.S. senior government officials due to “increased compliance costs.”⁴⁸ But such examples are both rare and contrary to international guidance and regulations.⁴⁹ The more significant costs of widespread false positives fall on the compliance professionals in the obliged entities that have to conduct enhanced due diligence, and derivatively the overall AML system. Every false positive places an unnecessary demand on scarce compliance resources, and excessive time spent sifting through unwarranted red flags diverts the compliance staff’s attention from the real red flags.⁵⁰

II. THE PROPOSAL: A GLOBAL PEP DATABASE

A. Preliminary Matters: Designating a Lead Organization and Defining PEPs

We propose the creation of a global PEP database, organized and administered by a transnational inter-governmental organization, and populated with data gathered by national governments.⁵¹ Before proceeding to the main features and benefits of such a database, we first note two preliminary issues.

The first preliminary question is which international organization would be responsible for oversight and management of such a database. The database would

⁴⁷ See, e.g., Amber M. Scott, *If Banks Can't Solve the Derisking Dilemma, Maybe the Government Will*, AM. BANKER (Apr. 20, 2015).

⁴⁸ See Tom Braithwaite et al., *JPMorgan shuts foreign diplomats' accounts*, FIN. TIMES (May 6, 2014), <https://www.ft.com/content/3a8f975c-d523-11e3-aded-00144feabdc0>.

⁴⁹ Both the 2013 FATF guidance on PEPs and the 2015 EU AML Directive specifically disapprove of refusing a business relationship with a person solely on the basis of PEP status. See Financial Action Task Force, FATF Guidance, Politically Exposed Persons (Recommendations 12 and 22) at 3 (June 2013), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>; 4th EU AML Directive, *supra* note 29, at para. 33 (last visited Apr. 3, 2019). Moreover, in the EU, refusing to do business with a customer solely on the basis of PEP status might also violate the rules on free movement of capital. See Fact Sheet on Free Movement of Capital, Eur. Parl. (2019), <https://www.europarl.europa.eu/factsheets/en/sheet/39/free-movement-of-capital>.

⁵⁰ This is a variant on the “crying wolf” problem that has been discussed in other contexts. See Előd Takáts, *A Theory of “Crying Wolf”: The Economics of Money Laundering Enforcement*, 27 J. L. ECON. & ORG. 32 (2011).

⁵¹ Some have suggested that civil society organizations might be able to address the PEP identification challenge by creating online registries using publicly accessible data. For example, the Anti-Corruption Action Centre in Ukraine compiled a register of Ukrainian PEPs by filing freedom of information requests and collecting information from published sources. See Public Register of Domestic Politically Exposed Persons of Ukraine, <https://pep.org.ua/en/> (last visited Jan. 21, 2020). Similarly, Transparency International’s Sri Lanka chapter recently launched its own PEP database for Sri Lankan officials. See Transparency International Sri Lanka, *Online Database of Politically Exposed Persons in Sri Lanka*, <https://www.peps.lk> (last visited Jan. 21, 2020). Despite these admirable efforts, however, it is unlikely that civil society groups will be able to provide adequate PEP databases, given concerns about sustainability and credibility. Obligated entities cannot use databases if there is no assurance that they are constantly updated. Furthermore, obliged entities need databases that can be accessed in an open data format in order to automatically scrape data for their own internal systems. Such databases also need to provide different keywords to be searched for each entry. Most civil society organizations rely on donations and project funding and would not have enough resources to maintain these databases and ensure their credibility. Furthermore, so far none of these attempts have been comprehensive enough for AML compliance purposes.

require, among other things, a secure server, as well as human and technical resources for management, maintenance, oversight, and access control. There are several plausible options, and identification of the specific organization is not strictly necessary for the elaboration of our proposal. Nonetheless, for the sake of completeness and specificity, we tentatively suggest that the entity best suited to this role would be FATF, given that this body already plays a significant role in establishing best practices for governments and obliged institutions with respect to managing AML risks. Admittedly, FATF does not have the authority to issue obligatory regulations to its members. Rather, it is an international standard-setting organization through which interested parties—public officials, state institutions, and obliged entities—exchange information, coordinate activity, and set new standards. FATF's recommendations only take effect if they are adopted by national regulators.⁵² Nevertheless, while FATF cannot issue binding regulations, FATF has succeeded in effecting substantial change in the global AML framework, including widespread (though certainly not universal) adherence to FATF's recommendations, through "soft" measures—international diplomacy efforts, peer review, assessment reports, and other mechanisms that generate political pressure to comply.⁵³ We acknowledge that administering a global PEP database would require additional resources and staff beyond FATF's current capacity. We return to the resources issue below, but in general we conjecture that the resource demands would be relatively modest. Overall, the project sufficiently linked to FATF's existing mandate to justify our suggestion that FATF (with the backing of member states) take the lead in setting up and administering a global PEP database along the lines of what we suggest below, and that FATF include participation in the global PEP database in its formal recommendations. That said, there are other possible entities that could take the lead on an international PEP database project,⁵⁴ and while the remainder of our discussion will refer to FATF as the principal manager of the project, the core of the proposal could be implemented through some other framework as well.

A second preliminary challenge concerns the current lack of a single universally-accepted PEP definition. The UNCAC, FATF, and/or the EU AML Directives provide the definitions that are used in most jurisdictions. These definitions are similar but not identical.⁵⁵ Perhaps partly as a consequence of this lack of uniformity at the international level, there are differences across national laws in the individuals classified as PEPs. The differences should not be exaggerated, however. As the definitions quoted earlier make clear, the core of the PEP definition is basically consistent. Nevertheless, there are some variations with respect to matters like how senior the position must be for the officeholder to count as a PEP, how close the familial or business relationship with an officeholder must be for a non-officeholder to count as a PEP, and for how long a former officeholder counts as a

⁵² See Nance, *supra* note 14, at 110.

⁵³ From 1999 to 2002, FATF operated a so-called "blacklist" of non-compliant countries, a process that pressured several countries to comply out of fear that their inclusion on this list would limit their participation in the global economy. See Rainer Huelssse, *Even Clubs Can't Do Without Legitimacy: Why the Anti-Money Laundering Blacklist Was Suspended*, 2 REG. & GOV. 459 (2008).

⁵⁴ Another option, for example, would be to assign the responsibility for hosting and administering the global PEP database to the UN's Office on Drugs and Crime (UNODC), the UN office that has responsibility (among other things) for implementing UNCAC. But establishing an international database through the UN system might prove even more complex than working through FATF.

⁵⁵ See *supra* notes 31–37 and accompanying text.

PEP after leaving his or her government position. If a single global PEP database is to be established, FATF (or whatever entity is responsible for administering this database) would need to issue guidelines so that countries know which individuals should be included. This will require some discussion and negotiation.

One question to be addressed is whether the PEP definition should be identical across all countries, especially with respect to the family and associates of senior officeholders. In countries where strong family ties extend to a wide circle of relatives, it might make sense to include more people in the PEP definition than in another country, where people do not typically have close bonds with more distant relatives.⁵⁶ We think that this consideration tends to be exaggerated, and that the benefits of a consistent PEP definition likely outweigh the benefits of attempting to tailor the PEP definition to various national contexts.

But for present purposes, we need not take a strong position on this issue, nor on other details regarding the *specific content* of the guidance that FATF would issue to national governments about who should be included on PEP lists. Rather, we simply note that FATF would need to issue some sort of guidance to participating countries regarding the individuals who should be included in the PEP database. Part of this process, as we discuss below, may involve issuing guidance to individual countries regarding which offices are sufficiently senior that the people holding those offices count as PEPs. FATF's guidance should also address questions like how long persons should remain in the PEPs category after they no longer serve in a senior public office position, and how close an individual's familial or business relationship with an officeholder needs to be for that individual to count as a PEP as well.

B. *Generating National PEP Lists*

Once these preliminary issues have been addressed, the next step in the process—and the heart of our proposal—is for each participating country to create its own database of domestic PEPs and to submit these databases to FATF, which would then aggregate them into a single global PEP database. Fortunately—and, in our view, crucially for the feasibility of our proposal—there would be no need for every country to compile its own PEP list from scratch, because most countries could assemble these lists automatically from declarations already filed by public officials pursuant to existing mandatory income and asset disclosure systems.⁵⁷ Indeed, the overwhelming majority of countries currently have some sort of financial disclosure system for public officials in place.⁵⁸ While these systems vary, the required

⁵⁶ See GREENBERG ET AL., *supra* note 3, at 35.

⁵⁷ This proposal builds on a suggestion advanced by Transparency International that “lists of officials required to file asset declarations” should be used “to identify who is considered a PEP for each country.” Transparency Int’l, Closing Banks to the Corrupt: The Role of Due Diligence and PEPs (Dec. 22, 2014), https://www.transparency.org/whatwedo/publication/policy_brief_05_2014_closing_banks_to_the_corrupt_the_role_of_due_diligence.

⁵⁸ As of 2017, 161 countries required public officials to file income and asset declarations with a government body. See World Bank Group, Getting the Full Picture on Public Officials: A How-to Guide for Effective Financial Disclosure 121 (Jan. 13, 2017), <https://star.worldbank.org/sites/star/files/getting-the-full-picture-on-public-officials-how-to-guide.pdf>. Furthermore, UNCAC Article 8 obligates State Parties to establish systems requiring public officials to make declarations to appropriate authorities regarding, among other things, “their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public

declarations typically contain the full names of the public officials, as well as basic identification data (such as date of birth and national ID number). In many cases, the declarations also include information on family members, as well as other information on potential conflicts of interest, such as the names of companies in which the person is a board member or has a substantial ownership stake.⁵⁹ The great advantage of using existing (or improved) financial declaration systems to generate the bulk of the PEP information is that is more efficient, and for that reason likely more sustainable.

Of course, using public officials' financial declarations to generate a domestic PEP list, though a good start, is not sufficient. A PEP list consisting of those officials who must file income and asset declarations is likely to be both over- and under-inclusive. Both of these problems must be addressed.

The over-inclusivity problem arises because not all the public officials who are obliged to file income and asset declarations under applicable domestic laws will qualify as PEPs under the governing international standard. Indeed, in those jurisdictions where most or all government employees must file financial declarations, only a relatively small percentage of the filers will qualify as PEPs. But performing the necessary sorting should usually be relatively easy. Many countries already require these declarations to be filed online, and most other countries can reasonably be expected to move toward online filing in the near future.⁶⁰ If the data is online, then all one needs to do, in order to cull the PEPs from the larger set of filers, is to have the officials filling out the declaration select their position, title, or rank from a drop-down menu; a simple algorithm can then use their selections to classify them as PEPs or non-PEPs. To enhance both transparency and accuracy, the system could also be programmed to provide an automatic notification to those filers whose positions qualify them as PEPs, including information on how long such a person will be a PEP after leaving his or her position. FATF and other collaborating organizations can provide advice to countries with respect to which positions and titles ought to trigger a PEP designation, as well as technical support in programming the systems to automatically export the PEP information from the financial declarations to the PEP lists.

While some over-inclusivity may remain, the over-inclusivity problem with these government-created PEP lists would likely be far less than the over-inclusivity of the current system, where, for example, an individual with the same name as a senior officeholder may be misclassified as a PEP. This would not happen in a system where names were accompanied by additional identifying information, like date of birth and national ID number. And in those few cases where an individual is incorrectly classified as a PEP on the official list, say due to a technical glitch or programming error, the problem should be easy to correct.⁶¹

officials." UNCAC Article 52(5), though framed in less mandatory terms, requires States Parties to consider establishing financial disclosure systems for appropriate public officials. See UNCAC, *supra* note 25.

⁵⁹ In many cases, public officials file two separate declarations, one listing income and assets, and the other listing private interests that might cause a conflict of interests.

⁶⁰ See World Bank Group, *supra* note 58, at 56–57.

⁶¹ This raises the question whether or how individuals who believe they have been misclassified as PEPs should be able to challenge the classification. We are not in a position to give a definitive answer to this question. Jurisdictions vary in the sorts of administrative determinations that can be challenged, and how those challenges may proceed. And while we see the value in allowing misclassified individuals

The under-inclusivity problem is more challenging, and takes several forms. The first, and perhaps easiest to deal with, is that an individual may continue to qualify as a PEP for a period of time even after she leaves her official position and no longer has to file financial declarations. That problem can be addressed straightforwardly by having the algorithm that populates the PEP database keep an individual in that database for a set period of time—with the exact amount of time determined, as noted above, by FATF's guidelines—after that individual no longer occupies a PEP-level position. The EU AML Directive treats former officeholders as PEPs for an additional 12 months after they leave office, which seems to be a reasonable benchmark.⁶²

A second under-inclusivity problem is that countries may keep the occupants of certain high-level offices confidential for national security reasons. Such officials might not need to file financial declarations, and even if they do, countries might not be willing to include those individuals in a database to which outside entities, including private firms and other countries' law enforcement agencies, would have access. That is likely an inherent limitation in any system that seeks to identify PEPs, and we do not have a good solution. We note, though, the with respect to this problem our proposal would do no worse than the current system, which relies solely on publicly available information.

The third under-inclusivity problem arises because a PEP database ought to include information not only on the senior government officials themselves, but also on their family members.⁶³ Fortunately, as noted above, many countries already require public officials to include information about family members, along with the family members' identifying information, in their financial declarations, and this information can also be exported to the PEP database. This is not a perfect solution, both because not all countries require officials to disclose their family members, and because even for those countries that do, the family members who need to be listed in a disclosure form might not include all of the family members who ought to be included in a PEP database. But, as we will discuss further below, this problem can be addressed both by having FATF note which countries' financial disclosure systems are inadequate to identify PEPs (for example, because they fail to require the inclusion of identifying information of sufficiently close family members) and by supplementing the government-created global PEP database with additional inquiries.

The fourth sort of under-inclusivity problem is similar, though even more challenging: Insofar as the PEP database is supposed to include the close business associates of senior public officials,⁶⁴ existing financial declaration systems are likely insufficient. That said, many countries do require public officials to file, as part of their financial and/or conflict-of-interest disclosure forms, information on the

to seek a correction, there are reasons to worry about giving any government agency the ability to make case-specific decisions to remove from the PEP list an individual who, according to the system's algorithms, would qualify as a PEP.

⁶² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (O.J. L156/43 19.6.2018) at Art. 22.

⁶³ See GREENBERG ET AL., *supra* note 3, at 35.

⁶⁴ *Id.*

companies in which they have a management role or significant ownership stake.⁶⁵ In those cases, this information could be exported to the PEP database and automatically cross-referenced with databases of company owners or managers (if such databases exist), in order to identify those people who have a close business relationship with a PEP. Here again, FATF and collaborating entities may play a crucial role in providing technical support to countries that need to revise their online systems to assemble this information. Realistically, though, this is a context where FATF is likely to need to issue a warning that the PEP database is incomplete, either generally or with respect to specific countries, insofar as it does not include close business associates of the senior officials in the database. Existing approaches to identifying PEPs—scraping and searching publicly available sources—will likely be required to catch close business associates of senior officeholders. Still, the existence of a reliable database of the officeholders themselves will likely make the process of identifying their business partners easier and cheaper.

The fifth under-inclusivity problem concerns international organizations. As noted above, the modern PEP definitions include those who hold a sufficiently senior position in an international organization—such as the United Nations, World Bank, IMF, and numerous other bodies. Officials in these organizations do not typically need to file income and asset declarations. The organizations do have employee databases, though, so it should not be difficult for international organizations to implement an algorithm that would automatically cull from their employee lists the names and identifying information of those officials who qualify as PEPs, and automatically update the list. It may be more difficult to get information on these officials' family members or close business associates, however. This sort of under-inclusivity is likely unavoidable, and would need to be addressed through supplementary investigations.

The sixth under-inclusivity problem is perhaps the most general: Individuals might not honestly or accurately report their positions (or the identities of their family members, or other required information), and so might not be flagged as PEPs even if they qualify. After all, the system we are proposing here relies on self-identification. A skeptic might reasonably point out that we have argued that reliance on PEP self-identification to obliged institutions under the current system is inadequate, and ask why we think a PEP database that also relies principally on self-identification will be any better. To this worry, we have three principal responses.

First, lying to the government on an income and asset declaration is usually much riskier than lying to a bank about PEP status. Most countries already have mechanisms to ensure accuracy in public officials' financial declarations, such as administrative sanctions or fines for stating false information in the declarations.

Second, given the interface we propose, public officials would not be asked directly if they are PEPs; rather, they would be asked to choose their position or rank from a drop-down menu. It is much less likely that officials would deliberately misrepresent their position, and much easier to catch and correct entries that are mistaken. Admittedly many countries do not do an adequate job verifying the information on public officials' financial declarations,⁶⁶ but errors, misstatements, and omissions are much more likely with respect to the declarant's income and assets,

⁶⁵ See World Bank Group, *supra* note 58 at 41–43.

⁶⁶ See GREENBERG ET AL., *supra* note 3, at 42.

rather than with respect to things like the declarant's official title and basic identification information.⁶⁷ That said, to the extent that officials omit information on the companies they own, or about family members whose business affairs may create conflicts of interest, we acknowledge that relying on self-reporting in financial disclosures may not be adequate. But, as we have already noted, we are not arguing that the global PEP database entirely replace in-house or third-party checks. Particularly with respect to family members and business associates, such checks will likely continue to be necessary, as emphasized earlier.

Finally, as we will discuss in more detail in the next subsection, FATF (or whatever international body is charged with administering the database) should conduct periodic audits to ensure that the information supplied by national governments is complete and accurate. The oversight body could conduct both technical audits, to ensure that the national systems are working as they are supposed to (for example, that the algorithms for identifying PEPs have been built into the financial declaration system correctly and are functioning properly), and also audits of the lists themselves (for example, by checking a sample of the names included in a country's PEP list against publicly available source material, collected through the conventional processes, and then investigating the reasons for any discrepancies). Based on the audit results, FATF should issue public notices regarding the countries for which there is reason to doubt the reliability of the PEP information included in the global database, together with an advisory that obliged entities should screen citizens of those countries more carefully for PEP status even if their names do not appear in the database. This would not only provide a warning to obliged entities not to over-rely on the global database, but might also put pressure on those countries whose data has been identified as unreliable to improve the administration of their financial declaration systems.

In sum, while setting up an automated system that would use public officials' online financial declarations to generate national PEP lists is not a perfect solution, it would likely be better than—and, after the original transition costs, substantially cheaper than—the current system, which relies on private firms doing things like Google and LinkedIn searches or scanning government webpages. While some commentators argue that countries should generate and continuously update national PEP lists without relying on self-reported information,⁶⁸ this approach would require substantial public resources, and would likely suffer from very high error rates, especially for positions with high turnover.

⁶⁷ Some critics argue that countries might manipulate their PEP lists, for example by deliberately omitting certain government officials or putting political opponents on the list. *See* GREENBERG ET AL., *supra* note 3, at 36; Kang, *supra* note 8, at 709. We are skeptical that this is a significant concern, at least for the sort of system we propose. First, assuming the system is automated, and that the code is reviewed and subject to audit, it would be difficult for governments to manipulate the list after the fact. Second, the idea that PEP lists would be manipulated to target the political opponents seems farfetched. Governments inclined to engage in such harassment have much more potent weapons at their disposal than exposing their opponents to heightened due diligence requirements at banks.

⁶⁸ Sungyong Kang appears to advocate something like this model. *See* Kang, *supra* note 8.

C. *Aggregating the National PEP Lists into a Global PEP Database*

The final step in the process would be the aggregation of the separate national PEP lists into a single global database. Each country's national PEP database should be converted automatically into a standardized format and then uploaded—ideally this would be done automatically—to a common server, administered by FATF (or whatever international body is entrusted with responsibility for managing the database). Thus, while each participating country would compile a list of *domestic* PEPs, the global database would cover PEPs from *all* participating countries—a kind of one-stop shop for PEP information.

Law enforcement agencies would have access to this database, as would obliged entities that have been appropriately vetted by their national financial intelligence unit (or a licensing unit, depending on the process). Once granted access, obliged entities could check any new prospective clients against the database, and could also automatically and continuously compare their existing client lists with the database.⁶⁹ We also suggest, though more tentatively, that appropriately vetted third-party vendors that provide PEP identification and screening services should also be granted access to the database. As we have emphasized repeatedly, these firms would continue to have an important, though more circumscribed, role to play even after the creation of a global PEP database, as these firms would help identify PEPs who are not obligated to make financial declarations in their home countries, or who circumvent these requirements. Granting these third-party screening firms access to the database would make conducting this supplementary research more efficient, and would avoid wasteful duplicative research into the identities of individuals who are already listed as PEPs in the global database. Given the potential sensitivity of at least some of the identifying information in the database, the vetting process for private firms should be rigorous, and these firms must demonstrate adequate data protection protocols. The PEP database itself should be protected by the highest level of cyber security, with the server located in a country that meets the highest standards of information security and data privacy.

A global PEP database of the sort we propose would have a number of advantages over the current approach to PEP identification. All the information on PEP identities that is currently public but scattered across a range of sources (in different languages) would be in one place. There would also be less wasteful duplication of effort. Furthermore, an automated updating process linked to financial declaration systems would substantially reduce errors associated with outdated information. A global PEP database of the sort we propose would have identifying information that is included on financial declaration forms but is often not public—such as birthday and national ID number. This would reduce both false positives—as when a non-PEP has the same or similar name as a PEP—and false negatives—as when a PEP uses different names (for example, an English first name and a name in his or her native language) in different contexts, or when complex naming conventions might lead to errors (for example, when two-word surname is mistaken for a middle name and surname, or vice versa). The inclusion of officials' family

⁶⁹ The introduction of the database would not require any fundamental change in obliged entities' so-called "risk-based" approach to AML. In some cases, where the overall risk level is low, checking clients against the global database might be deemed sufficient to fulfill the obligation to identify PEPs. In other cases, where the risks are higher, obliged entities might need to do more supplemental checks.

members and close business associates, to the extent that such information can be gleaned from financial declarations, is also the sort of information that would be included in the global PEP database we propose, but that is frequently not public, or can only be gleaned from public sources with significant research. While obliged entities would still need to perform some supplemental screening—either directly or through contacting with an outside vendor—the costs would be much lower, which would, in turn, free up more resources to dedicate to other aspects of AML compliance.

As noted above, the centralized PEP database we propose would not be publicly accessible, but rather limited to national law enforcement agencies and vetted private firms (principally the obliged entities who must conduct PEP screening on clients, and those firms that conduct PEP screening and investigation services). A number of scholars and activists have argued that PEP lists ought to be public, not only out of a generalized interest in transparency, but because the possibility of external scrutiny could increase the accuracy of the lists.⁷⁰ We acknowledge the strength of that argument, but we are inclined to argue for a limited-access PEP database, rather than an open-access PEP database, for two main reasons. First, countries might be unwilling to submit their national PEP lists to the global database if that information would become public.⁷¹ Second, publicizing an individual's PEP status might raise personal privacy concerns. Countries vary with respect to their rules on data privacy, but a publicly-accessible PEP database might be problematic in some jurisdictions.⁷² One could address this concern by redacting identifying information like birthday, address, and national ID number, but eliminating this identifying information would also reduce the utility of public accessibility. Creating two versions of the database—a limited-access version with full identifying information, and a public-access version with only names and positions—might be a possible solution, but this would add to the administrative burden. So at least for now, we advocate a limited-access global PEP database, which seems ambitious enough for the moment.

⁷⁰ See Kang, *supra* note 8, at 714. The question whether PEP lists should be published was also raised but not answered by one of us in a blog post several years ago. See Matthew Stephenson, *Should There Be a Public Registry of Politically Exposed Persons?*, GLOBAL ANTICORRUPTION BLOG (June 7, 2016), <https://globalanticorruptionblog.com/2016/06/07/should-there-be-a-public-registry-of-politically-exposed-persons/> (last visited Jan. 21, 2020).

⁷¹ This concern may be especially pronounced with respect to the identities of the individuals who work in sensitive positions. While it would be possible to redact the names of certain individuals, this would create an additional administrative burden.

⁷² One might also question whether even a limited-access PEP database—one that includes not only names and positions, but other identifying information like addresses, national ID numbers, and photographs—might offend data privacy laws. We believe the answer is no, given that the purpose of collecting and sharing PEP data is for the lawful aim of combating money laundering. While personal data privacy protections vary across jurisdictions, most national laws and international regimes recognize that the interest in data privacy can be outweighed by legitimate law enforcement interests. See, e.g., UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, on Its Twenty-Third Session, A/HRC/23/40 (Apr. 17, 2013), p. 8, ¶¶ 28–29. Even the EU's General Data Protection Regulation (GDPR), which establishes one of the most stringent set of data privacy protections, recognizes a number of legitimate bases for restricting the right to data privacy, including the "prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security." Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (O.J. L119/1 4.5.2016), Art. 23(d).

An important challenge for the international database that we propose, to which we alluded in the previous subsection, is ensuring the accuracy of the information submitted by national governments. If that information is not accurate—whether due to inadvertent errors or to deliberate misrepresentation or manipulation—then the global database will not be reliable. Even worse, the existence of the global database could create a false sense of reliability, leading to the inappropriate diversion of resources away from more rigorous independent PEP screening. This is why we have emphasized that the international body overseeing the database (tentatively FATF) should be able to conduct audits and provide notices regarding countries whose PEP lists are not sufficiently reliable.⁷³ We recognize that authorizing such audits may raise complicated questions, particularly since the oversight body may not have the capacity to perform a large number of resource-intensive independent checks. But some degree of independent auditing is likely crucial.

More generally, even if one rejects the suggestion that the oversight body should conduct independent audits, this body can still issue advisories when, in its judgment, other aspects of a country's institutions or overall governance environment suggest that the country's PEP lists should not be treated as reliable. One aspect of this assessment would focus on the quality of the financial declaration system, including whether this system has adequate safeguards and penalties for inaccuracy.⁷⁴ Additionally, though perhaps more controversially, a country's overall level of (perceived) corruption might be considered when deciding whether the country's submissions to the global PEP database should be treated as reliable, on the logic that if a country suffers from systemic corruption, there is a high risk that the national agency responsible for administering the financial declaration system and submitting PEP lists for the global database might itself be untrustworthy. So, FATF might designate certain countries with very high perceived corruption as sufficiently high risk that obliged entities should conduct more intensive review of all prospective clients from those countries for PEP status, even if their names do not appear in the global PEP database. Of course, obliged entities are likely to conduct more intensive scrutiny on wealthy clients from extremely corrupt countries regardless of their PEP status, but the list of countries where the official PEP lists are unreliable may not exactly match the list of countries that are considered "high AML risk." And, much as countries already have an incentive to avoid bad ratings from FATF on other aspects of their AML systems, countries may have an incentive to avoid a public judgment that their official PEP lists, supplied to the global database, are unreliable. This, in turn, might have the desirable collateral consequence of pressuring countries to improve their financial declaration systems more generally.

Another important concern regarding the system we propose is its cost. Currently, though private sector entities incur substantial expense to perform PEP screening, governments do not incur any direct budgetary costs. The reform we advocate would shift some of those costs from the private sector to governments—both to national governments (which, under our proposal, would have to modify their domestic financial declaration systems so as to automatically generate and export PEP lists, and to cross-reference those lists with other data on things like firm

⁷³ See Kang, *supra* note 8, at 710–12.

⁷⁴ These assessments may be facilitated by the fact that countries' financial declaration systems are already reviewed under other evaluation processes, such as the UNCAC institutional review mechanism.

ownership) and to the international body (tentatively FATF) that would be responsible for managing the database, vetting private firms seeking access, and conducting periodic audits of countries' PEP lists and identification systems. We also anticipate that many countries will need significant external support to set up appropriate systems. These cost concerns are not trivial, but if we are correct that the overall costs of PEP identification would be dramatically lower under the system we propose than under the current system, then the cost issue should prove surmountable. One partial solution would be to require private sector users (primarily obliged entities and vendors that provide PEP screening services) to pay an annual fee to defray the costs of administering the database and performing supplemental services, like vetting and audits. This way, rather than simply shifting the cost burden of PEP screening from the private sector to the public sector, the private sector would continue to bear some (perhaps most) of the financial burden. If we are correct that the creation of the central database will substantially reduce PEP screening costs overall, then the private sector would still be significantly better off than it is now.

A couple of additional points on the cost issue: While certain aspects of our proposal, such as the call for periodic audits of countries' PEP lists, would entail additional expenses not incurred by any party in the current system, those expenses are likely cost-justified given that they help ensure accurate PEP lists—something the current system does not guarantee. Second, while some countries might need to incur significant costs and administrative burdens to modify their financial declaration systems, these would mainly be transition costs. After the new systems were set up, the maintenance and operation for individual countries would likely be quite manageable.

Of course, because creating a central database does entail some additional expense and practical challenges, one might argue that we ought to have stopped our proposal after the first stage—the creation of national PEP lists—rather than arguing that these individual national PEP lists should be aggregated into a single international database. Instead, perhaps each country should be responsible for compiling its own PEP database, and then all obliged entities should have access to all of those databases when they need to check whether current or potential clients count as PEPs. That might work, but there are two reasons we believe a central PEP database, administered by an inter-governmental body like FATF, would be preferable. First, the entity entrusted with managing the international database (tentatively FATF) can provide oversight and quality control. In that capacity, FATF can both issue appropriate guidance to countries with respect to the compilation and management of their databases, and can also provide warnings to obliged entities when a given country's database is unreliable or incomplete. Second, a single global PEP database, to which obliged entities have continuous access (possibly through automated cross-references with client lists) would be more efficient, and these efficiency gains would offset, and possibly outweigh, the additional costs associated with administering a global database.

CONCLUSION

A global PEP database, populated primarily with data drawn from participating countries' income and asset declaration systems, would have substantial advantages over the current system, which relies on private-sector searches of

scattered public source material. A centralized global database could dramatically lower costs, while also improving accuracy. There would be some non-trivial transition costs, and some additional ongoing management burden, but the overall gains to both the public and private sector—in terms of both efficiency and accuracy—would likely be significant enough over the longer term to justify the costs involved.

To be sure, that view is based on the assumption that PEP screening is, and will remain, an important component of the AML framework. That assumption has been challenged by those who argue that “the classic corrupt PEP is dead,” in the sense that corrupt senior public officials now almost never try to launder their illicit wealth by opening foreign accounts in their own names (or those of close relatives or associates).⁷⁵ There is some truth in this: Both corruption and money laundering have certainly become more sophisticated, and many corrupt PEPs now take more elaborate measures to conceal their identities, for example by employing complex schemes involving multiple shell companies and sham transactions.⁷⁶ But it is mistaken to conclude from this that there is no longer any value in trying to improve the PEP screening system to make it more accurate and more efficient. For one thing, the fact that PEPs are now more likely to use more sophisticated means to launder their illicit wealth is due at least in part to the fact that the global AML regime’s greater emphasis on PEP screening and enhanced due diligence has made money laundering harder, riskier, and more expensive. Furthermore, it is simply not true that efforts to identify and monitor PEPs no longer make any meaningful contribution to the fight against money laundering. For example, the U.S. Treasury Department’s 2018 report to Congress noted that efforts to identify and monitor PEPs successfully help to enable the detection of attempts by Russian officials to launder, hide, or move the proceeds of corruption.⁷⁷ And PEP screening is not going anywhere soon, so trying to make the system work better seems like a worthwhile investment of time and resources.

To date, the idea that governments might take responsibility for generating PEP lists, and the related idea that there should be some sort of central repository for PEP data, have been frequently floated by civil society activists and others, but just as frequently have been dismissed as impractical. Those dismissals have been far too hasty. This article has outlined how a global PEP database could be created, maintained, and administered. Such a database, if appropriately designed and supplemented with independent checks, would both improve the accuracy of PEP screening and substantially reduce the overall costs of identifying PEPs, thus freeing up scarce compliance resources for other valuable AML tasks. While we have not attempted to work out all the details of the system, our hope is that this short article will prompt more serious consideration of what we suspect would be a salutary reform.

⁷⁵ See GREENBERG ET AL., *supra* note 3, at 19

⁷⁶ See, e.g. FREDERIK OBERMAIER & BASTIAN OBERMAYER, *THE PANAMA PAPERS: BREAKING THE STORY OF HOW THE RICH AND POWERFUL HIDE THEIR MONEY* (2016); Work Bank Group [WBG], *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Nov. 3, 2011), <http://documents.worldbank.org/curated/en/784961468152973030/pdf/The-puppet-masters-how-the-corrupt-use-legal-structures-to-hide-stolen-assets-and-what-to-do-about-it.pdf>.

⁷⁷ U.S. Treasury Dep’t, *Report to Congress Pursuant to Section 243 of the Countering America’s Adversaries Through Sanctions Act of 2017 Regarding Interagency Efforts in the United States to Combat Illicit Finance Relating to the Russian Federation* (Aug. 6, 2018), pp. 13–14.

