CHIEF EXECUTIVE

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Subject: *EBF comments on the OECD Discussion Draft on BEPS Action 10: proposed modifications to chapter VII of the transfer pricing guidelines relating to low value-adding intra-group services*

Dear Mr Hickman,

The European Banking Federation (EBF) welcomes the opportunity to comment on the OECD's current work on the transfer pricing guidelines relating to low value-adding intra-group services as part of the Base Erosion and Profit Shifting (BEPS) project.

The EBF is committed to contributing constructively to the BEPS project, in the expectation that the final outcome will deliver fair, certain, sustainable and principled rules.

We consider this revision of Chapter VII of the OECD Transfer Pricing Guidelines as very instructive. We believe that once the recommendations set out in the report are refined, they will certainly ease the compliance burden on the taxpayers. We therefore support the OECD work on this and encourage the Committee on Fiscal Affairs (CFA) to reach consensus view in order to adopt the proposed recommendations.

Further to the above general comment, we would like to provide comments on the following three specific points:

1. **Chapter D.1.** provides for a definition of low value-adding intra-group services. In the current discussion draft, Information Technology Services are described as 'likely to meet the definition of low value-adding services'. However, our understanding is that IT development services would as a rule not be eligible to qualify as low value-adding services to the extent that such services give rise to the creation of valuable and unique intangibles.

   This would imply that it would be impossible to include the cost related to the development of such intangibles in cost pools. In our view, this does not sufficiently reflect the fact that certain of these intangibles, which might involve significant development efforts and costs, are often only developed and designed within the context of a multinational group in order to ensure compliance with legal, accounting, regulatory requirements in a more standardized or efficient manner, but do not really add to the commercial activities of such group (e.g. group-wide standardized data capturing and reporting tools which are developed in order to ensure compliance with specific requirements imposed by financial regulators; e.g. development of a group-wide accounting platform).

In these circumstances, such intangibles only support low value-adding support activities and it should basically be possible to include the cost of such intangibles in cost pools. In this regard, it would be helpful to include a definition of the concept 'unique and valuable intangibles', which ensures that high development cost intangibles which are only supportive for low value-adding activities could be included in cost pools.

2. **Chapter D.2.1.** describes the first step of the simplified approach i.e. use of cost pools. We very much welcome this pragmatic approach towards intra-group service charging. The discussion draft however does not clearly indicate how to deal with costs in general and cost pools in specific (e.g. which costs should be in the cost base? Which ones are out? Which correction of charges are needed at year end? pass through costs?). In this regard, we would very much welcome a clear position on the conditions and circumstances in which cost pool charges could be based on budgets, without a further requirement to effect any year-end correction of charges based on actuals. This would allow multinational groups to ensure stable pricing of intragroup services for internal clients and reduce significant administrative efforts and costs caused by year-end correction mechanisms.

3. Under **chapter D.2.3.** a mark-up range for low value-adding services has been proposed, i.e. 2-5%. However we note that the 2011 'EU Joint Transfer Pricing Forum (JTPF) report on low value-adding intra-group services' mentions an arm's length range between 3 % and 10 %. We suggest that the proposed range be reconsidered taking into account the EU JTPF findings, as the use of this broader range would decrease the necessity to make adjustments due to year-end reconciliations and would contribute to a simplified approach.

We appreciate your consideration of our comments and suggestions and remain at your disposal to contribute further as the work develops.

Yours sincerely,

Wim Mijs