



Brussels, 16 March 2022
Ares (2022)1860228

Dear Mr. Campa,

Dear Jose Manuel,

I would like to thank you for the EBA Opinion and Report on de-risking adopted on 5 January 2022.

I wish to commend the EBA for this very thorough analysis of an issue that we too find extremely important and topical both in terms of financial inclusion and of competition. We agree with you that de-risking affects different types of customers or potential customers of financial institutions across the EU. This includes specific segments of the financial sector such as payment institutions and electronic money institutions, as well as certain categories of individuals or entities, for example asylum seekers or not-for-profit organisations.

We have considered your advice as laid down under point 21 a. and b. of your Opinion. You are, in particular, advising the Commission:

- 1) To clarify the interaction between AML/CFT requirements and the right to open and use a payment account with basic features, for example by including in the PAD a mandate for guidelines on this point, which could be prepared jointly by the EBA and the new Anti-Money Laundering Authority (AMLA).
- 2) To clarify the application of Article 36 of PSD2 during the forthcoming review of PSD2. As part of this, the Commission may wish to consider mandating the EBA to develop technical standards to ensure the consistent application of Article 36.

As regards the first initiative, I believe that waiting for such mandate for EBA Guidelines to be included in either PAD or in the currently negotiated AML package, and for the AMLA being set up, would lead to considerable delays. Given the importance of the matter that we seek to address, faster action is necessary.

I therefore believe that the EBA should not wait for a formal Level 1 mandate in order to start working on Guidelines clarifying the interaction between PAD and AML.

I am therefore inviting the EBA to start as soon as possible to work on Guidelines, based on Article 16 of Regulation (EU) No 1093/2010, on the articulation of PAD rules (in particular article 16(4) thereof) and the AML framework. The Guidelines should consider the de-risking issue in its broadest financial inclusion dimension. The EBA should in this respect take into consideration some specific de-risking situations mentioned in its report, namely that of the

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so-called accidental Americans and of the Politically Exposed Persons. Moreover, given the scale of the problems linked to de-risking described in the EBA report, we would suggest to broaden the scope of such guidelines beyond the interaction of AML and PAD requirements and include other relevant topics, such as de-risking related to the non-profit sector (which the EBA could look at from a purely AML/CFT viewpoint), and de-risking related to the compliance with sanctions^[1], including implications from extra-territorial sanctions.

As regards the second initiative, which we could describe as 'anti-competitive de-risking', I confirm that, in the context of the ongoing PSD2 review, we are going to explore how best to clarify its article 36. We will examine the opportunity of proposing an EBA mandate to ensure a consistent application of this article.

Finally, I would invite the EBA to swiftly assess whether its 2016 "Opinion on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories" is fit for purpose in the context of the current Ukrainian refugee crisis.

I would appreciate hearing feed-back from you on the above invitation and, in particular, on the deadline within which such Guidelines could be completed.

Yours sincerely,



Mairead McGuinness

^[1] That could cover the situation where banking services are denied to persons with identical or similar names to those of individuals designated under sanctions (see in particular paragraph 9 and following, EU Best Practices for the effective implementation of restrictive measures available at <https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>). It could also cover the situation where EU NGOs are denied banking services in support of their humanitarian operations in environments under sanctions (see Section 3.2.3.4 Domestic implementation of sanctions, 'IHL and the humanitarian impact of counterterrorism measures and sanctions' available at <https://www.chathamhouse.org/2021/09/ihl-and-humanitarian-impact-counterterrorism-measures-and-sanctions>). Last, it could cover the denial of services to diplomatic offices in the EU of countries where sanctions apply.