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EBA, ESMA and EIOPA's

Report on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions under the Third Money Laundering Directive [2005/60/EC]

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List of Abbreviations

AML – Anti Money Laundering
AMLTF – Anti-Money Laundering Task Force of the EBA, ESMA and EIOPA
AML Committee – The Joint Committee of the European Supervisory Authorities’ Sub Committee on Anti Money Laundering
CDD - Customer Due Diligence
CPMLTF – EU Committee on the Prevention of Money Laundering and Terrorist Financing
CTF – Counter Terrorist Financing
EBA - European Banking Authority
EC – European Commission
EEA - European Economic Area
EIOPA - European Insurance and Occupational Pensions Authority
EDD – Enhanced Due Diligence
ESMA - European Securities and Markets Authority
EU – European Union
FATF – Financial Action Task Force
ID - Identity
ML – Money Laundering
MS – Member State of the European Union
SDD - Simplified Due Diligence
TF – Terrorist Financing
UBO – Ultimate Beneficial Owner
WG – Working Group
3rd MLD - Third Money Laundering Directive (2005/60/EC)

1. Executive Summary

Background

1. This paper provides an overview of EU Member States' legal and regulatory provisions and supervisory expectations in relation to the application of the Simplified Due Diligence (SDD) requirements of the Third Money Laundering Directive [2005/60/EC] (3rd MLD). SDD means a derogation from the Directive's normal customer due diligence requirements in certain situations.
2. The data for this paper was obtained from the EU and EEA supervisors, who are members and observers of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), collectively known as the European Supervisory Authorities. The paper is based upon EU Member States' (MS) current legal and regulatory provisions and supervisory expectations collected by a questionnaire and subsequent discussions and it was collated and analysed by the Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee).
3. This report focuses on national implementation and understanding of the provisions of the 3rd MLD on CDD measures (Article 7), SDD measures (Article 11), EDD measures (Article 13) and the handling of unusual and suspicious activities and transactions (Article 20) where the customer is a credit or financial institution. The assessment is subdivided into three sections, first the scope and nature of the SDD, second the expected use of equivalence provisions and third the supervisory expectations with respect to the limits of application of SDD in high risk situations.

Findings

4. The AML Committee found that Member States have adopted significantly different approaches to the 3rd MLD's SDD provisions, both in relation to the scope of SDD (the extent to which institutions¹ are exempt from the application of the different CDD components) and the degree of freedom of judgement for institutions when assessing whether SDD can be applied in individual circumstances.

¹ For easier reading the term "institution" is used throughout this document and refers to Article 2 and 3 of Directive 2005/60/EC where

- Article 2 states that this Directive shall apply to (1) credit institutions and (2) financial institutions; and
- Article 3 states that for the purposes of this Directive the following definitions shall apply: 'credit institution' means a credit institution, as defined in the CRD and 'institution' means
 - (a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices;
 - (b) an insurance company;
 - (c) an investment firm as defined in Dir 2004/39/EC (MiFID);
 - (d) a collective investment undertaking marketing its units or shares;
 - (e) an insurance intermediary as defined in Dir 2002/92/EC;
 - (f) branches, when located in the Community, of institutions as referred to in points (a) to (e), whose head offices are inside or outside the Community.

5. These differences are, in part, expected and due to the minimum harmonisation nature of the 3rd MLD. But the AML Committee was concerned that in some cases, differing requirements and practices affect the soundness of Europe's AML/CTF regime.
6. Below is a summary of findings:-

I Prerequisites and measures of SDD

MS have adopted different approaches to requiring institutions to obtain "sufficient information" to determine whether a situation qualifies for SDD, which as a consequence means that there is a risk that:

- Institutions in different MS apply different criteria to assess whether SDD can be applied.

A minority of MS have transposed the SDD provision to always allow the application of SDD where the customer is a credit or financial institution, irrespective of high risk indicators.

Member States (MS) have also defined the scope of SDD measures differently. Definitions adopted by MS range from a continuous customer identification and verification requirement and monitoring, to a total exemption from all CDD measures. As a result, there is a risk that:

- Institutions in different MS will have to carry out different types and levels of CDD measures in situations which qualify for SDD;
- The presumption of AML/CTF equivalence practices within the EU could be challenged where national definitions of SDD can mean a total exemption from all CDD measures.
- There will be cost implications for institutions operating in different MS.

II Use of provisions to determine the equivalence of third countries

MS have different approaches to determine equivalence of third countries for AML/CTF purposes. While some require institutions to assess themselves, on a risk-sensitive basis, which third countries are equivalent, others have enshrined a list of equivalent jurisdictions in their legislation or regulation, with limited or no scope for institutions to arrive at different conclusions.

The different approaches to determining equivalence of third countries present a range of challenges:

- On the one hand, where credit and/or financial institutions are required to make such an assessment themselves, they might lack the skills, knowledge and business incentives, to make an objective and an up-to-date assessment of the AML/CTF equivalence of third countries.
- On the other hand, where equivalence is determined by legislation or regulation, and prescribed in a list, such a list might result in less flexibility by a MS to reflect in a timely manner developments that affect the equivalence of jurisdictions on that list.
- Furthermore, existence of equivalence lists might impact how a credit and/or financial institution conducts their own assessment of AML/CTF risks linked to individual business relationships by, for example, acting as a disincentive for

institutions properly to assess the risk associated with customers from equivalent jurisdictions”.

Proposed follow up

7. The issues noted above are a result of differences in the national transposition of the 3rd MLD. Accordingly these differences, if considered undesired and counterproductive to an efficient AML/CTF regime, could be addressed by clarification of relevant provisions in EU legislation². The following is a list of non-exclusive and potentially overlapping measures that could be considered:

- Clarification by EC, possibly in the context of the EC’s forthcoming review of the 3rd MLD, of:
 - The perceived obligatory nature of the SDD provision in Article 11(1);
 - The degree to which SDD measures can be applied (Article 11) where there may also be indications of a high-risk situation (Article 13);
 - The interrelationship between the equivalence of a jurisdiction’s AML/CTF framework and the assessment a credit or financial institution must make regarding the AML/CTF risks associated with the individual business relationship with an institution located in these jurisdictions (e.g. must the relationship with an institution from a high-risk jurisdiction automatically be assessed as high-risk?); and
 - The minimum CDD requirements for SDD situations.
- Supervisory guidelines on a common approach to “gathering sufficient information” in respect to Article 11 (3), specifying further the minimum information that credit institutions must gather before a judgement is made.

² Correspondent banking is not covered by this report, but the EC might wish to consider the extent to which the issues noted in this report are also relevant to correspondent banking. Furthermore, the derogation from Articles 7(a), (b) and (d), 8 and 9(1) for listed companies, beneficial owners of pooled accounts, domestic public authorities and different types of low-risk products do not fall under the scope of this report.

Chapter 2: Introduction

The 3rd Money Laundering Directive and SDD

8. The 3rd Money Laundering Directive sets out a number of measures MS have to require their institutions to take in order to deter and detect money launderers, including the identification of customers and verification of their identity, as well as ongoing monitoring of customers in order to detect possible money laundering.
9. Furthermore, institutions should understand who their customers are, and where applicable the customer's beneficial owner. They also have to have an understanding of the purpose and intended nature of the business relationship; this information is key to understanding the risks associated with the business relationship and to apply ongoing monitoring of the business relationship in a meaningful way.
10. Article 8 sets out that customer due diligence measures should comprise of:
 - Identifying the customer and verifying the customer's identity
 - Identifying the beneficial owner and verifying his identity
 - Obtaining information on the purpose and intended nature of the business relationship
 - Conducting ongoing monitoring of transactions, ensuring transactions conducted are consistent with what is known about the customer, their business and risk profile.

Institutions may determine the extent of customer due diligence on a risk-sensitive basis.

11. In certain situations simplified due diligence can apply; where the money laundering risk associated with the business relation is increased enhanced due diligence must be applied.

Simplified due diligence (Article 11, 3rd MLD)

12. Article 11 (1) of the 3rd MLD states that where the customer is a credit or a financial institution located in the EU/EEA, or in a third country which imposes requirements equivalent to those laid down in this Directive and supervised for compliance with those requirements the entities covered by the Directive, the financial institution shall not be subject to the requirements provided by Articles 7(a), (b) and (d), 8³ and 9(1).⁴ This means that institutions are not required to carry out the CDD measures listed in Article 8 and 9 (see paragraph 10 above) in the following cases:

- when establishing a business relationship with such an institution (Article 7 (a))

³ Article 11 of the 3rd MLD exempts institutions from the application of all CDD measures described in Article 8 of the 3rd MLD in certain low risk situations. However Recital 6 of the Implementing measures to the 3rd MLD, Directive 2006/70/EC, notes that in these situations ".....the requirements for institutions and persons covered by that Directive (3rd MLD) do not disappear, and these are expected to, inter alia, conduct ongoing monitoring of the business relations, in order to be able to detect complex or unusually large transactions which have no apparent economic or visible lawful purpose".

⁴ Article 11 (2) and 11(5) of the 3rd MLD which describe the derogation from Articles 7(a), (b) and (d), 8 and 9(1) for listed companies, beneficial owners of pooled accounts, domestic public authorities and different types of low-risk products do not fall under the scope of this report.

- when carrying out occasional transactions amounting to EUR 15 000 or more (Article 7 (b))
- when there are doubts about the veracity or adequacy of previously obtained customer identification data (Article 7 (c)).

13. Article 11(3) furthermore states that institutions and persons covered by the 3rd MLD shall gather sufficient information to establish if the customer qualifies for a derogation as mentioned in Article 11(1) of the 3rd MLD.

Simplified due diligence applies in certain low risk scenarios only.

14. Where there is a suspicion of ML/TF, institutions must apply CDD (Article 7(c)). Article 13(1) requires that on a risk-sensitive basis enhanced CDD (EDD) measures must be applied in situations which by their nature can present a higher risk of ML/TF. Article 20 states that special attention should be paid to any activity that is regarded, by its nature, to be related to ML/TF, and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

The Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee)

15. The Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee), was established in 2011, and assists the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) in a supervisory capacity, in providing an AML supervisory contribution to the implementation practices derived from the Third Anti-Money Laundering Directive - 2005/60/EC [3rd MLD]. The AML Committee assists EU AML supervisors of credit and financial institutions in finding common responses to the issues that emerge from the day-to-day application of the Third Money Laundering Directive (3rd MLD), inter alia. The AML Committee has taken over the tasks of the former Anti Money Laundering Task Force (AMLTF), a joint committee of the former Level 3 Committees, CEBS, CESR and CEIOPS, including its SDD working group.

16. The data included in this document should be used for information only, and should not be used as a transposition check of EU Directives.

Work performed by the AML Committee in respect of analysis of certain aspects of the Third Money Laundering Directive

17. The AMLTF published in 2009 a Compendium Paper on Members States' Implementation practices regarding CDD requirements across the EU.⁵ Whilst working on this paper, the AMLTF noted differences in Member States implementation practices.

18. All twenty seven EU Member States (MS) and two EEA countries completed the questionnaire for the 2009 Compendium Paper.

⁵ See <http://eba.europa.eu/getdoc/8369a533-cf27-41cc-9a84-0dffdd707577/Compendium-Paper-on-the-supervisory-implementation-.aspx>.

19. The AMLTF noted differences in the national transposition of the 3rd MLD's SDD provisions. These differences are in part expected and due to the minimum harmonisation requirement of the 3rd MLD. The AMLC however viewed it was important to ensure that any differences which may occur do not undermine the EU's AML regime by creating gaps or loopholes that could be exploited for ML/TF purposes. Accordingly the AMLTF sought to explore these differences further to assess whether such differences had an impact on the level playing field, and the overall effectiveness of the AML/CTF regime.
20. The AMLTF also noted that the evaluations by the FATF of some MS' AML/CTF regimes had raised concerns about the compliance of these MS' SDD provisions with the FATF's Recommendations.
21. FATF Recommendation 5 "Customer due diligence and record-keeping" allows for simplified or reduced Customer Due Diligence (CDD) measures for circumstances where the risk of money laundering (ML) or terrorist financing (TF) is lower, for example where information on the identity of the customer and the beneficial owner is publicly available, or where adequate checks and controls exist elsewhere in national systems. Countries can decide whether financial institutions can apply these simplified measures only to customers in its own jurisdiction, or also to customers from equivalent jurisdictions. Further, SDD measures are not acceptable whenever there is a suspicion of ML/TF or where specific higher risk scenarios apply.
22. Three deficiencies have been identified by the FATF mutual evaluation reports regarding the transposition of the 3rd MLD, namely:
- a. Where MS have directly transposed the 3rd MLD's SDD provisions in their domestic legislation, FATF criticised the perceived obligatory character - as interpreted by FATF and some MS - of simplified CDD measures;
 - b. Scope of SDD measures in the 3rd MLD (FATF Recommendation 5 does not allow a total exemption from CDD measures and interprets "simplified due diligence" as meaning all CDD measures, but applied on a risk-sensitive basis (i.e. less detailed CDD for lower risk situations) while the 3rd MLD in the view of some MS provides for full exemption from all CDD requirements); and
 - c. The explicit presumption of compliance with the 3rd MLD by all EU MS and EEA Countries (this also applies to extension of SDD by some EU MS to jurisdictions on the "equivalence" list, while FATF in Recommendation 7 requires EDD for cross border banking relationships (Recommendation 7)).
23. Accordingly the AMLTF established a Simplified Due Diligence (SDD) Working Group, which issued a questionnaire to explore further differences in SDD practices previously noted by the AMLTF, with a view to providing a summary of legal and regulatory provisions and supervisory expectations surrounding the credit and financial institutions SDD obligations in the 3rd MLD, and identifying any issues resulting from any differences noted in Member States' approach.
24. Since 2011, the AML Committee has met regularly to assess progress and agree on the work of the SDD Working Group.

Chapter 3: Assessment of Member States legal and regulatory provisions and supervisory expectations in relation to Simplified Due Diligence for credit and financial institutions

3.1 Introduction

25. This chapter examines the answers provided by twenty-six MS and two EEA countries to the AMLTF's "questionnaire on Simplified Customer Due Diligence" [AMLTF 2010 09 Rev2].
26. This report focuses on national implementation and understanding of the provisions of Articles 7, 11, 13 and 20 of the 3rd MLD. The first section examines the perceived obligatory nature of SDD measures defined in the 3rd MLD and the scope of SDD. The second section considers the expected use of equivalence provisions by MS with respect to CDD and the third section considers the limits of the application of SDD in high risk situations.
27. This report is based upon EU Member States' current legal AML/CTF framework and supervisory expectations in relation to SDD. It analyses national implementation practices relating to SDD. This paper should not be viewed as a transposition check of EU Directives. Further this paper does not anticipate the outcome of the FATF revision of the FATF's 40+9 Recommendations.
28. A copy of the questionnaire as well as the relevant articles in the 3rd MLD can be found in the Annexes to this report.

3.2 Scope and nature of SDD

Perceived obligatory nature (Article 11 (1) 3rd MLD)

29. Article 11 (1) provides, by way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), that institutions ***shall not be required*** to apply CDD measures where the customer is a credit or financial institution covered by 3rd MLD or a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in the 3rd MLD and supervised for compliance with those requirements.
30. One MS has transposed this provision as always allowing the application of SDD where the customer is a credit or financial institution, irrespective of high risk indicators. However, for the majority of MS the application of SDD is possible on a risk sensitive basis, provided that the credit or financial institution has no reason to suspect that the risk might not be low.

Scope of SDD

31. The scope of SDD differs amongst MS. When SDD is applied, fourteen MS do not exempt institutions from the identification of the customer; five MS do not exempt institutions from the verification of the customer's identity; six MS require institutions to obtain information on the purpose and intended nature of the business relationship; and nineteen MS require their institutions to conduct ongoing monitoring of the business relationship.
32. Four MS exempt institutions from the application of all CDD measures in cases of SDD, while one MS requires institutions always to understand the ownership and control structure of the customer.

33.All but one MS exempt institutions from identifying and verifying the identity of the ultimate beneficial owners.

34. The below table illustrates aspects of the CDD process that are required by AML/CTF Law and/or Regulation in cases of SDD.

Table 1: Aspects of the CDD process that are required by AML/CTF Law and/or Regulation in cases of SDD⁶.

	Number of MS's
Identification customer	15
Verification customer ID	5
Identification UBO	1
Risk Based verification UBO	1
Understanding the ownership and control structure of the customer	1
Information on the purpose and intended nature of the business	6
Conducting ongoing monitoring	21
All the above aspects	0
None of the above aspects	6

Requirement to gather sufficient information (Article 11 (3) 3rd MLD)

35.Article 11(1) 3rd MLD provides for a derogation from the CDD requirements of Article 8 3rd MLD. However, Article 11 (3) 3rd MLD requires the gathering of sufficient information to establish if the customer qualifies for SDD. The 3rd MLD does not specify what constitutes "sufficient information" in this context.

36.The AMLTF noted that there was an almost even split amongst MS between those who have developed guidance on what constitutes sufficient information for the purposes of Article 11 (3) 3rd MLD and those who have not. Specifically, fourteen MS have developed guidance in this regard. Three of these MS are currently preparing further guidance.

37. Twenty-one MS consider that it is not possible to apply SDD on the sole basis that a financial institution concludes that a customer is a financial institution with a seat in the EU or equivalent jurisdiction.

38.Of these MS, three groups emerge. The first group of four MS prescribe what firms are expected to do. Examples included checking a register of authorised entities published by a competent authority in a particular jurisdiction.

39.The second group of sixteen MS are less prescriptive in their approach, they do not specify the exact details of information which would be deemed sufficient; they specify merely that it should be reflective of the information required to ensure that a customer qualifies for SDD. Examples of what is deemed sufficient include: ascertaining whether the other financial institution is supervised or monitored for compliance with requirements laid down in 3rd MLD; or equivalent requirements if customer is outside EU. These MS took the approach that supervised institutions must

⁶ Notwithstanding the exemptions from AML/CTF legislation, MS may require institutions to collect information on the customer to monitor the relationship on account of the general prudential requirements. Further without prejudice to the requirement to get adequate information to ensure that the client is indeed a credit or financial institution.

have done enough to be able to demonstrate that conditions for making use of an exemption were met.

40. A third group of MS did not specify the additional information firms must have collected.

On-going monitoring for AML/CTF purposes

41. Some MS exempt financial institutions from ongoing monitoring for AML/CTF purposes where SDD applies.

42. Five MS have exempted institutions from ongoing AML/CTF monitoring⁷ of customers who are other EU financial institutions. For three of these MS, financial institutions established in another EU MS may be considered as low risk clients unless there is information indicating that there is a risk of ML/TF. Where there is an increased risk of ML/TF, financial institutions are subject to more intense checks. However, where there is no such threat it is deemed acceptable not to monitor the business relationship.

43. The majority of MS do not exempt their credit and financial institutions from ongoing AML/CTF monitoring of customers who are from the EU/EEA. The monitoring obligation extends also to regular verification of data used for identification, updating relevant documents, data and information and if necessary identification of the source and origin of funds used in transaction to the extent that this information is required in a SDD context.

44. Twenty MS responded that there is a legal requirement to conduct ongoing monitoring of customers that are credit or financial institutions from "equivalent third countries" whereas for seven MS there is no legal requirement. Of these, six MS responded that it is nevertheless the practice of financial institutions to monitor the business relationship, where there is no legal/regulatory requirement.

45. In some MS, institutions are explicitly required to obtain sufficient, meaningful information to monitor the business relationship with a view to identifying suspicious transactions, but this information does not have to be verified (as is the case where normal CDD obligations apply). One MS requires simplified/reduced ongoing monitoring in situations where SDD is allowed.

3.3 Use of equivalence provisions for the purpose of SDD

Definition (Article 11 (1) 3rd MLD)

46. SDD applies to credit or financial institutions covered by the 3rd MLD and credit and financial institutions situated in a third country which imposes requirements equivalent to those laid down in the 3rd MLD and supervised for compliance with those requirements

47. Fifteen MS have implemented a list of equivalent states by legislation in their jurisdiction (based on the non-binding list of equivalent third countries by the EU Committee on the Prevention of Money Laundering and Terrorist Financing (CPMLTF)). In one MS a transitory provision of the law states that all FATF members are temporary considered equivalent; however that MS intends to replace that temporary list with a new one compiled on the basis of the non-binding list by the CPMLTF. Three MS have specified the equivalent countries in regulation issued by the supervisor.

⁷ While exempted from ongoing AML/CTF monitoring as defined in Article 8 (1) d 3rd MLD, institutions may still be required to conduct a general monitoring of the relationship for other prudential purposes. When abnormalities are noticed thanks to the general monitoring, AML/CTF monitoring may consequently be required as well.

48. Six MS have neither legislation nor binding guidance that lists equivalent jurisdictions for the purpose of Article 11 (3) 3rd MLD. It is the responsibility of each institution to decide which countries it deems equivalent.

How are institutions expected to use provisions

49. In nineteen MS where an equivalence-list has been issued, institutions are able based on their own risk assessment not to apply SDD in respect of an institution having its registered office in one of the equivalent states. This means that, if facts and circumstances lead to a heightened risk of ML/TF, institutions can decide to apply enhanced CDD, regardless of where the client is located. Institutions are therefore still obliged to gather sufficient information to establish that the customer falls into the SDD category. In those MS which have not formally issued a list of equivalent countries, the CPMLTF list can be used by institutions as a factor institutions can take into account in their risk assessment.

50. Seven MS state that institutions are not allowed to apply a broader list than determined at the national level.

51. In the majority of MS, the credit and financial institutions do not apply SDD if there is a suspicion of ML/TF, regardless of whether a client is or is not located in an equivalent country (as per Article 7, 3rd MLD).

Distinction between EU MS and equivalence of third countries

52. For the purpose of Article 11 (1) 3rd MLD, twenty-three MS do not draw a distinction between equivalence of other EU MS and equivalence of third countries; and Three MS do draw a distinction.

Requirement to gather sufficient information (article 11(3) 3rd MLD)

53. The majority of MS, do not distinguish between EEA countries and equivalent third countries for the purpose of Article 11(3). In most cases, SDD can be undertaken unless there is a specific indication that the risk associated with the business relationship is increased. Institutions are expected to be able to justify to the national supervisor that they have gathered sufficient information and taken the necessary measures to ensure that the relevant customers fall within the derogation categories stated in the AML law.

54. In one MS, although there is no distinction, practice suggests that more information is gathered for institutions situated in a third equivalent country.

55. The majority of MS apply different approaches to equivalent and non-equivalent jurisdictions. For the remainder MS there is no different approach to jurisdictions not deemed equivalent.

Complex and unusually large transactions (Art 20 3rd MLD)

56. For twenty-three MS, SDD is not possible where there are complex or unusually large transactions or unusual patterns of transactions, even if the customer institution is located in an equivalent 3rd country.

57. Four MS apply a different approach when the customer institution is located in another MS or a 3rd country which is deemed equivalent. For these MS, their approaches may take into account the complexity of the customer's business and if appropriate, continue to apply SDD to such customers even in the case of complex or large transactions.

58. The majority of MS do not apply a different approach when the customer is from a non-equivalent 3rd country. These MS answered that there is no SDD where there is a jurisdiction which is not considered equivalent.

59. However, a group of MS distinguish their supervisory approach where the customer is from a non-equivalent 3rd country, and as such enhanced CDD applies, for all transactions, and not just for large and unusual transactions.

3.4 High risk situations and SDD

Suspicion of money laundering or terrorist financing (Article 7 3rd MLD)

60. Article 7 (c) requires institutions and persons covered by the Directive to apply CDD measures when there is a suspicion of money laundering or terrorist financing, regardless of any derogation (for example SDD), exemption or threshold in their national framework.

61. Twenty-eight⁸ MS have transposed this as a requirement to perform CDD when there are indications of ML/TF or when the risk of ML/TF is increased, regardless of any derogation, exemption or threshold. As a consequence, twenty-six MS do not allow financial institutions to (continue to) apply SDD in situations where there are indications that this risk is increased (but where the financial institution has no suspicion of ML/TF).

62. Nineteen MS expect institutions to assess whether there are 'grounds for suspicion or increased risk' by analysing the customer's, products, services and other relevant factors. Institutions are required to gather sufficient information to determine whether the customer satisfies all of the conditions required to apply SDD. Two MS expect a case by case assessment based on indicators of suspicion, for which written guidance has been issued.

63. In nine⁹ MS, institutions must have up-to-date customer information on the basis of which it will be possible to spot unusual transactions, in order to effectively monitor the business relationship (which they are not exempted from in these countries, even if SDD is applicable).

Enhanced Due Diligence (Article 13 3rd MLD) and SDD in high risk ML/TF circumstances

64. According to Article 13 3rd MLD, the application of EDD measures and enhanced ongoing monitoring are required in situations which by their nature present a higher risk of money laundering or terrorist financing.

65. The majority of MS expect that in all cases where a customer presents a higher money laundering or terrorist financing risk EDD must be applied. In situations which would otherwise qualify for SDD, CDD or EDD must be applied where an institution identifies information that the risk associated with the business relationship is no longer low.

Complex and unusually large transactions (Art 20 3rd MLD)

66. Article 20 3rd MLD requires that the institutions and persons covered by the 3rd MLD pay special attention to any activity which they regard as particularly likely, by its

⁸ Twenty-six MS and two EEA countries

⁹ [For some of these MS this may be due to prudential supervisory requirements rather than as a result of AML/CTF requirements]

nature, to be related to money laundering or terrorist financing particularly complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

67. Almost all MS require special attention to be paid to activities mentioned in Article 20 3rd MLD. However, this is not the case in one MS where the relevant legislation does not specify situations/activities likely to be related to ML/TF but examples are listed in the MS' guidelines.
68. Nineteen MS have developed guidance on the definition of 'complex or unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose' (Article 20 of 3rd MLD), whereas nine MS have not developed such guidance. Of these MS who do not have guidance, two MS are currently preparing guidance in this area.
69. The majority of MS who have developed guidance explained that there are lists of examples or typologies of what might constitute potentially suspicious transactions/activities, or mention indicators for unusual transactions.
70. Twenty-five MS have a legal requirement prescribing that an institution shall always take enhanced due diligence measures, for complex/large transactions, including monitoring, if there is a high risk of ML/TF even if the customer is an institution from an EU/EEA country. SDD cannot be applied where the customer poses high ML/TF risk.
71. Four MS state that even where the EU/EEA customer poses high ML/TF risk, there is no legal requirement to conduct monitoring. In three of these MS, financial institutions nevertheless tend to monitor the business relationship.

Questionnaire on Simplified Customer Due Diligence (SDD)

Member State
Name of supervisory authority
Name of person completing form
Contact details of person completing form

AMLTF members are asked to answer the following questions:
(Please indicate and specify whether the content of your answer is provided by law, regulation, guidance or "other" in your jurisdiction):

1. Description of the transposition of Article 11(1)

<p>Article 11</p> <p>1. By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), the institutions and persons covered by the 3rd MLD <i>shall not be subject to the requirements provided for in those Articles</i> where the customer is a credit or financial institution covered by the 3rd MLD, or a credit or financial institution situated in a third country which imposes requirements <i>equivalent</i> to those laid down in the 3rd MLD and supervised for compliance with those requirements.</p>
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- a. Is this obligatory in your jurisdiction? Y/N
- b. For which aspects of the CDD process (Article 8(1)) does the exemption apply?
 - i. Identifying the customer? Y/N
 - ii. Verifying the customer’s identity? Y/N
 - iii. Identifying the UBO? Y/N
 - iv. Risk-based and adequate measures to verify the UBO? Y/N
 - v. Risk-based and adequate measures to understand the ownership and control structure of the customer? Y/N
 - vi. Obtaining information on the purpose and intended nature of the business relationship? Y/N
 - vii. Conducting ongoing monitoring of the business relationship? Y/N
 - viii. All the above aspects? Y/N

If your answer is ‘No’ please describe how you expect institutions to conduct this aspect of the CDD process, if it differs from the “normal” due diligence that an institution performs?

- c.
- i. How do you define equivalence for the purpose of Article 11, 3MLD? Please set out whether this is based on legislation, regulation or guidance (and if the latter, whether this guidance is enforceable).
 - ii. How do you expect financial institutions to use these provisions?
 - iii. For the purpose of Article 11, do you draw a distinction between equivalence of other EU MS and equivalence of third countries? If so, please explain.
- d. Article 11.2 (a) provides for SDD for listed companies, subject to meeting certain criteria. Does your jurisdiction provide for SDD in such cases? Y/N
- i. If SDD is permitted for listed companies, does that treatment extend to wholly-owned subsidiaries or branches of such listed companies?
 - ii. Or is the normal range of CDD required for such subsidiaries and branches?

2. Has your jurisdiction developed guidance with respect to CDD?

Article 7

The institutions and persons covered by the 3rd MLD shall apply customer due diligence measures in the following cases:

(c) *when there is a suspicion of money laundering or terrorist financing*, regardless of any derogation, exemption or threshold;

- i. Please set out how Article 7(c) has been transposed in your jurisdiction.
- ii. How do you expect financial institutions to assess whether there are grounds for suspicion, or that the risk associated with the business relationship is increased, in situations that would otherwise qualify for SDD? Where applicable, please refer to relevant guidance.
- iii. Do you allow financial institutions to (continue to) apply SDD in situations where there are indications that the risk is increased (but where the financial institution has no suspicion of ML/TF)? Y/N
 - a. If yes, please explain.
- iv. If the 3rd countries' jurisdiction is deemed "equivalent":
 - a. Describe your supervisory approach for the purpose of Article 7?
 - b. Does it differ with your approach to those jurisdictions, which are not deemed equivalent? Y/N

Article 11

3. In the cases mentioned in paragraphs 1 and 2, institutions and persons covered by the 3rd MLD shall in any case *gather sufficient information* to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

- v. Has your jurisdiction developed guidance on the requirement to gather sufficient information to establish if the customer qualifies for an exemption? Y/N
- vi. Is it enough that a bank concludes that its customer is a bank with a seat in the EU or an equivalent jurisdiction? Y/N
- vii. Or is it necessary for the bank to collect additional information? Y/N

- a. If Yes, kind of information the bank needs to collect?
- viii. If the 3rd countries' jurisdiction is deemed equivalent:
 - a. Describe your supervisory approach for the purpose of Article 11(3)?
 - b. Does it differ with your approach to those jurisdictions, which are not deemed equivalent? Y/N

Article 13

1. Member States shall require the institutions and persons covered by the 3rd MLD to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), *in situations which by their nature can present a higher risk of money laundering or terrorist financing*, and at least in the situations set out in paragraphs 2, 3, 4 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria established in accordance with Article 40(1)(c).

- ix. Has your jurisdiction clarified under which circumstances enhanced customer due diligence is required (situations which by their nature can present a higher risk of money laundering or terrorist financing)?
- x. If the 3rd countries' jurisdiction is deemed equivalent:
 - a. Describe your supervisory approach for the purpose of Article 13?
 - b. Does it differ with your approach to those jurisdictions, which are not deemed equivalent? Y/N
- xi. Have you excluded other EU banks from ongoing monitoring? Y/N
 - a. If so, describe under what circumstance

Article 20

Member States shall require that the institutions and persons covered by the 3rd MLD pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing *and in particular complex or unusually large transactions and all unusual patterns of transactions* which have no apparent economic or visible lawful purpose.

- xii. Does your legislation/regulation include the requirement to pay special attention to activities as mentioned in Article 20?
- xiii. Has your jurisdiction developed guidance on the definition of "complex or unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose"?
- xiv. If the 3rd countries' jurisdiction is deemed equivalent:
 - a. Describe your supervisory approach for the purpose of Article 20?
 - b. Does it differ with your approach to those jurisdictions, which are not deemed equivalent? Y/N

- 3. What are financial institutions' practices in your jurisdiction concerning SDD with respect to customers that are credit or financial institutions from the EU/EEA that may pose a high risk?**
- i. Does your jurisdiction consider that it is a legal requirement to conduct such monitoring? Y/N
 - ii. Is it the practice of banks to monitor the business relationship, even if this is not a legal/regulatory requirement?
- 4. What are financial institutions' practices in your jurisdiction concerning SDD with respect to customers that are credit or financial institutions from "equivalent third countries?"**
- i. Does your jurisdiction consider that it is a legal requirement to conduct such monitoring? Y/N
 - ii. Is it the practice of banks to monitor the business relationship, even if this is not a legal/regulatory requirement? Y/N

Annex II

EU framework Customer Due Diligence in 3rd Money Laundering Directive [EC 2005 60]

Customer Due Diligence

Article 7

The institutions and persons covered by the 3rd MLD shall apply customer due diligence measures in the following cases:

- (a) when establishing a business relationship;
- (b) when carrying out occasional transactions amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Article 8

1. Customer due diligence measures shall comprise:

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by the 3rd MLD is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;
- (c) obtaining information on the purpose and intended nature of the business relationship;
- (d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

2. The institutions and persons covered by the 3rd MLD shall apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The institutions and persons covered by the 3rd MLD shall be able to demonstrate to the competent authorities mentioned in Article 37, including self-regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

Article 9

1. Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.

2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be completed as soon as practicable after the initial contact.

3. By way of derogation from paragraphs 1 and 2, Member States may, in relation to life insurance business, allow the verification of the identity of the beneficiary under the policy to take place after the business relationship has been established. In that case, verification shall take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

4. By way of derogation from paragraphs 1 and 2, Member States may allow the opening of a bank account provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the aforementioned provisions is obtained.

5. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 8(1), it may not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit (FIU) in accordance with Article 22 in relation to the customer.

Member States shall not be obliged to apply the previous subparagraph in situations when notaries, independent legal professionals, auditors, external accountants and tax advisors are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

6. Member States shall require that institutions and persons covered by the 3rd MLD apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.

Simplified Customer Due Diligence

Article 11

1. By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), the institutions and persons covered by the 3rd MLD shall not be subject to the requirements provided for in those Articles where the customer is a credit or financial institution covered by the 3rd MLD, or a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in the 3rd MLD and supervised for compliance with those requirements.

2. By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1) Member States may allow the institutions and persons covered by the 3rd MLD not to apply customer due diligence in respect of:

- (a) listed companies whose securities are admitted to trading on a regulated market within the meaning of Directive 2004/39/EC in one or more Member

States and listed companies from third countries which are subject to disclosure requirements consistent with Community legislation;

(b) beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States, or from third countries provided that they are subject to requirements to combat money laundering or terrorist financing consistent with international standards and are supervised for compliance with those requirements and provided that the information on the identity of the beneficial owner is available, on request, to the institutions that act as depository institutions for the pooled accounts;

(c) domestic public authorities,

or in respect of any other customer representing a low risk of money laundering or terrorist financing which meets the technical criteria established in accordance with Article 40(1)(b).

3. In the cases mentioned in paragraphs 1 and 2, institutions and persons covered by the 3rd MLD shall in any case gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

4. The Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b).

5. By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), Member States may allow the institutions and persons covered by the 3rd MLD not to apply customer due diligence in respect of:

(a) life insurance policies where the annual premium is no more than EUR 1000 or the single premium is no more than EUR 2500;

(b) insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) electronic money, as defined in Article 1(3)(b) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, where, if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or where, if the device can be recharged, a limit of EUR 2500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000 or more is redeemed in that same calendar year by the bearer as referred to in Article 3 of Directive 2000/46/EC, or in respect of any other product or transaction representing a low risk of money laundering or terrorist financing which meets the technical criteria established in accordance with Article 40(1)(b).

Enhanced customer due diligence

Article 13

1. Member States shall require the institutions and persons covered by the 3rd MLD to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), in situations which by their nature can present a higher risk of money laundering or terrorist financing, and at least in the situations set out in paragraphs 2, 3, 4 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria established in accordance with Article 40(1)(c).

2. Where the customer has not been physically present for identification purposes, Member States shall require those institutions and persons to take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures:

- (a) ensuring that the customer's identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by the 3rd MLD;
- (c) ensuring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

3. In respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States shall require their credit institutions to:

- (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;
- (b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;
- (c) obtain approval from senior management before establishing new correspondent banking relationships;
- (d) document the respective responsibilities of each institution;
- (e) with respect to payable-through accounts, be satisfied that the respondent credit institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

4. In respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country, Member States shall require those institutions and persons covered by the 3rd MLD to:

- (a) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- (b) have senior management approval for establishing business relationships with such customers;
- (c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
- (d) conduct enhanced ongoing monitoring of the business relationship.

5. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by a shell bank.

6. Member States shall ensure that the institutions and persons covered by the 3rd MLD pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

Article 20

Member States shall require that the institutions and persons covered by the 3rd MLD pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose