ABI Associazione Bancaria Italiana

"Joint Consultation Guidelines under Article 17 and 18/4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing money laundering and terrorist financing risk associated with individual business relationships and occasional transactions".

Comments on the document
made available for consultation by the
European Supervisory Authorities
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Introduction

ABI welcomes the drafting of these guidelines on the grounds that they may contribute to the creation of safeguards - harmonised at European level to combat money laundering.

In this context, the draft Guidelines were examined in order to verify the operational application of the proposals made by the above authorities.

Generally speaking, the Guidelines appear suitable for providing guidance to intermediaries on the correct procedures for customer due diligence. We also appreciated the structure of the Guidelines, which allows for the use of more detailed risk analysis instruments appropriate for individual products/business lines.

However, there are some issues – both general and specifically operational – that require greater consideration in order to assure banks of the preservation of processes and procedures implemented under the previous legislation and the creation of a legal framework that takes into account the requirements of the digitalization of banking activity.

Below are the comments on individual points.

Title I - Subject matter, scope and definitions

- **Definitions, point 8 – occasional transaction definition**

The guidelines define the occasional transaction as follows: "Occasional transaction" *means a transaction which is not carried out as part of a business relationship as defined in Article 3(13) of Directive (EU) 2015/849"*.

Consequently, the definition of "*occasional transaction*" should be changed as follows: "occasional transaction means a transaction, **amounting to EUR 15000 or more**, which is not carried out as a part of a business relationship as defined in article 3(13) of Directive 2015/849" in order to align it with the provision of the above mentioned directive.

Title II - Assessing and managing risk – general part

- **Customer Risk Factors**

In several passages of the guidelines relating to the identification of risk associated with customers, reference is made to risks linked to the profession of the beneficial owner (e.g. point 18, letter *a*), the geographical area in which the activity takes place and the source of wealth or of funds of the beneficial owner (point 19).

On this matter clarification is needed as to how to retrieve the required information and on how this type of investigation may be carried out on the basis of the risk-based approach.

As regards the first aspect (information retrieval methods), it should be noted that the information required regarding the beneficial owner may be supplied to the Bank only from the customer (who is not the beneficial owner) who, however, is not obliged to have knowledge of it and therefore might legitimately not even possess it. This information may also not be accessible through consultation of the central database on beneficial owners, which will be implemented at national level, as such information is not part of the data that the Directive requires companies to disclose in the register of beneficial owners.

With reference to the second point (use of the risk-based approach for the acquisition of such information), clarification is needed on the appropriateness of such a pervasive check on the beneficial owner in the absence of a specific and high risk of money laundering attributed to it. Indeed, if such a recommendation were to be applied to all customers for the purpose of determining the risk associated with them, the cost of due diligence would increase significantly.

- **Point 19, first bullet point**

Point 19 of the Guidelines states that "*Risk factors that may be relevant when considering the risk associated with a customer or the beneficial owners' business or professional activity include:*

• *Does the customer or beneficial owner have links to sectors that are associated with higher corruption risks, such as construction, pharmaceuticals and healthcare, arms trade and defence, extractive industries and public procurement?*"

We would suggest a clarification that the reference to high-risk areas of corruption (*construction, pharmaceuticals health care, arms trade and defence, extractive industries and public procurement*) is merely by way of example and that their relevance be correlated to their concrete risk as reflected in the national risk assessments (where available).

Risk Management: simplified and enhanced customer due diligence

- **Point 41 and following - Simplified customer due diligence measures**

Art. 17 of the directive tasks the ESAs with identifying risk factors and the measures to be applied where simplified customer due diligence is appropriate.

With regard to **risk factors**, it should be noted that the Guidelines precisely identify the aspects to consider for certain lines of business.

It would be appropriate to include in the Guidelines even more general indicators of low risk that can thus – in accordance with necessary checks and evaluations – support the application of simplified due diligence regardless of the line of business.

It would in fact be opportune to consider those cases which, under Directive 2005/60/EC, enable the default application of simplified verification, classifying them as one of the risk factors that – without prejudice to the assessments made by the intermediary – may be indicative of low-risk situations; this would allow banks to preserve processes and procedures already used and implemented under Directive 2005/60/EC.

Particular reference is made to cases in which the customer is: **1)** a supervised financial intermediary/lender; or **2)** a subsidiary of a company listed on a regulated market or a supervised financial intermediary; **3)** when the customer entity is entirely controlled by a legal person subject to enforceable disclosure requirements that ensure that reliable information about the customer's beneficial owner is publicly available, for example public companies listed on stock exchanges that make such disclosure a condition for listing.

In the latter case, it is also very easy to trace the chain of control, since the parent has the obligation to provide disclosure about their corporate structure.

As for **the measures** to be adopted in the case of simplified due diligence, it would be welcomed a partial revision of the general measures indicated in the Guidelines with a view to ensuring operational continuity for the banks with the procedures implemented and with the decisions taken under the previous Directive.

In particular, it is requested that the measures applicable in the case of simplified customer due diligence also include those provided by art. 11 of Directive 2005/60/EC and its implementing provisions to be adopted according to a risk-based approach.

- **Point 42 – second bullet point, first subsection**

Point 42, second bullet point, first subsection provides that:

"*Simplified customer due diligence measures that firms may apply include, but are not limited to:*

- *adjusting the quantity of information obtained for identification, verification or monitoring purposes, such as:*

(i) verifying identity on the basis of one document only; or (...) ".

We would suggest that the entire first subsection be deleted because it is not clear why a simplified measure must consist of customer identity verification on the basis of a single document. This practice could be used appropriately also for the application of ordinary customer due diligence obligations.

- **Enhanced measures for customer due diligence**

Art. 18 of the Directive tasks the ESAs with identifying risk factors and the customer due diligence measures for the implementation of enhanced customer due diligence. In this context, the general part of the Guidelines contains no indication of general risk factors additional to those set out in the Directive in Annex III that can guide the intermediary in implementing enhanced measures.

- **Sectorial guidelines – Correspondent banking –Respondent based in non-EEA countries**

  - **Point 88 - third bullet point**

This point provides that in the case of a very high risk of money laundering, the banking and financial intermediaries, in dealing with the respondent, should apply a stringent series of enhanced customer due diligence measures. The measures proposed by the European Supervisory Authorities include on-site visits, which the correspondent should use to verify the effectiveness of anti-money laundering policy and procedures implemented by the respondent. The proposed measure is very burdensome for the banking industry. We therefore propose to delete the provision or possibly include other verification measures (for example, compliance calls) so that there is a range of mitigation measures considered appropriate by the European Supervisory Authorities.

We would also consider necessary that the text include examples of methods that can be used to perform quality checks of money laundering risk mitigation safeguards adopted by the respondent. From a reading of the first sentence of the relevant passage, it is clear that these controls should be carried out **not only** by acquiring a copy of the respondent's anti-money laundering policies and procedures.

  - **Point 88 - third bullet**

We propose the inclusion of the following provision: "*to support data sharing, correspondents should include provisions in the contractual framework with*

customers which allow the bank to provide information on request to other banks for AML/CFT compliance purposes".

Sectorial Guidelines – Retail Banking

- **Point 100 - Customer risk factors for retails banks**

I. vi) *subsection: customer non-residence is envisaged as an indicator of risk*. On this point, we would need clarification as to the compatibility of such provisions with the financial inclusion objectives that the European legislator is trying to accomplish with draft legislation currently being defined.

II. vii) *subsection: a rise in the risk of money laundering is expected when the beneficial owner "is not easily identifiable" (for example, because the customer ownership is unusual, complex or opaque.)* Clarification would be useful on this point, given that European legislation requires abstention from entering into a business relationship or from carrying out an occasional transaction if it is not possible to obtain information and comprehensive documentation in this regard.

- **Point 101 - Factors that may indicate a lower risk**

As for bullet points 2, 3 and 4, clarification is needed on how such indications – concerning public companies listed on a regulated market, domestic public administration or enterprise; or financial institutions from specific jurisdictions – can be considered to fall within retail business sectors that by their nature target individuals and small and medium enterprises.

- **Point 104 - Distribution Channels Risk Factor**

In line with EC Directive 849/2015, the first bullet should include electronic signatures among the additional safeguard measures.

Indeed, it is important that recommendations by the European Supervisory Authorities take into account the need for balance between the objectives of combating money laundering and the digitalisation of banking.

In this context the following bullet points should also be reviewed (especially the latter), which refers to customer due diligence executed by third party; this being so, the obliged entities should have also in this case the possibility to evaluate the transaction based on the risk-based approach.

"Third parties" are qualified and supervised.

It must be borne in mind that the digitalisation of banking is now a reality undergoing development and is constantly evolving. The EU Commission has

pushed strongly for this and it is mentioned in several papers and in many areas.

- **Point 106**

- The third bullet point, ii) subsection provides for "*obtaining more information about the customer and the nature and purpose of the business relationship to build a more complete customer profile, for example by carrying out open source or adverse media searches or commissioning a third party intelligence report". Examples of the type of information sought include:*

  establishing the source of the customer's funds to ascertain that this is legitimate"

It would be appropriate to delete the reference to the words "*to ascertain that this is legitimate*", since banks, when verifying the customer's source of funds, are not required to ensure that they are "legitimate" but rather to exclude that there are reasonable grounds to suspect that the funds are the proceeds of crime.

- **Point 149**

This part of the Guidelines states that "*simplified due diligence is not appropriate in a wealth management context".* We would suggest that this sentence be eliminated because, as indicated by Directive 849/2015 (art. 15), the Member State is the entity delegated to allow – or prohibit – the application of simplified customer due diligence requirements for sectors/business lines considered to be at low risk of money laundering. Consequently, feedback on the level of risk associated with wealth management should also fall outside the operation of the Guidelines.

- **Point 170 - third bullet point:**

Point 170, third bullet, provides that "*Checks on transactions may include: checking that the weights and volumes of goods being shipped are consistent with the shipping method*".

One of the transaction controls is to ensure that the weight and volume of goods shipped is consistent with the "shipping method". It does not seem to be a control that falls within those on the AML/CTF side that are required when examining the transaction. We propose the removal of the bullet point, or include the specification "where information is available."