

## NEW ANTI MONEY LAUNDERING GUIDELINES FROM THE EBA

On Monday, 1 March 2021, the European Banking Authority (EBA) published new AML and CTF guidelines on the risk factors and measures to be implemented where simplified customer due diligence and enhanced customer due diligence are appropriate (the "**Guidelines**"), in accordance with Articles 17 and 18(4) of the Fourth AML Directive (EU Directive 2015/849). In line with the evolution of the legislative framework, the Guidelines will replace those previously issued by the three European Supervisory Authorities (EBA, EIOPA<sup>1</sup> and ESMA<sup>2</sup>) in June 2017 and will become applicable after the publication of the official versions in all EU languages.

### UPDATED GUIDELINES

Articles 17 and 18(4) of Directive (EU) 2015/849 delegated to the EBA the responsibility for issuing guidelines, for both credit and financial institutions (collectively "**Firms**") and the national competent Authorities, in relation to the risk factors to be considered and the measures to be implemented where simplified and enhanced customer due diligence are appropriate.

In June 2017, a first version of the guidelines was issued by the three European Supervisory Authorities. Since then, however, the applicable legislative framework in the EU has significantly evolved: primarily Directive (EU) 2018/843 (AMLD5) was adopted and new risks have emerged. Accordingly, the original risk factor guidelines had to be updated; the result of the update will be the repeal of the 2017 guidelines, which will be replaced with the newly-published Guidelines.

### CONTENTS

The Guidelines strengthen the requirements on individual and business-wide risk assessments and customer due diligence measures, adding, for example,

#### Main Contents

- New Guidelines for identifying risk factors and carrying out business-wide and individual ML/TF risk assessments;
- Additional contents: process for identifying beneficial owners; simplified due diligence measures; classification of cases triggering enhanced due diligence; effective monitoring of transactions; training in AML/CTF.

<sup>1</sup> European Insurance and Occupational Pensions Authority.

<sup>2</sup> European Securities and Markets Authority.

new guidance on the identification of beneficial owners. Further, the Guidelines provide more details on risk factors relating to terrorism financing.

The Guidelines are divided into two parts, or Titles:

## **1) Title I**

Title I is the general section, which applies to all Firms and equips them with tools to make informed, risk-based decisions when identifying, assessing and managing money laundering (ML) and terrorism financing (TF) risks associated with individual business relationships or occasional transactions.

In this general section, the Guidelines address the following issues:

### **Identifying ML/TF risk factors**

The Guidelines describe a number of risk factors and indicators, including customer risk factors; countries and geographical areas; products, services and transactions risk factors and delivery channel risk factors.

### **Risk assessment**

Guideline no. 3 focuses on how Firms can assess the overall level of the risks, which include taking a holistic view, weighting risk factors and categorising risk (depending on the nature and size of the Firm's business).

### **Beneficial ownership**

The Guidelines also clarify that when assessing a customer's ownership and control structure, Firms must: (i) ask the customer information as to its ultimate beneficial owner(s) (UBOs); (ii) record the information obtained; (iii) take all necessary and reasonable measures to verify the information (including consulting the beneficial ownership register if available<sup>3</sup>). As per the Guidelines, mere consultation and use of the information on beneficial ownership included in the register, however, does not, in and of itself, suffice to meet the requirement to take adequate and risk-sensitive measures to identify the beneficial owners and verify their identity. The Guidelines set out examples of "*control through other means*" and clarify the criteria to identify UBOs.

### **Simplified Customer Due Diligence**

The Guidelines provide examples of simplified customer due diligence (CDD) measures, with regards to timing, quantity of information obtained and quality of the sources; frequency of updates and review.

### **Enhanced Customer Due Diligence**

The Guidelines describe those circumstances that, under the Fourth AML Directive (Directive (EU) 2015/849), must always be treated as higher risk, as well as the relevant measures to be applied.

Further, the Guidelines include specific provisions on politically exposed persons, high-risk countries, unusual transactions and other high risk-situations. The Guidelines also provide examples of enhanced customer due diligence measures, in terms of quantity and quality of information obtained and frequency of review.

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<sup>3</sup> In this regard, in Italy implementation of the Company Register's special section dedicated to beneficial ownership is still ongoing. The implementation decree received the positive opinion of the Data Protection Authority on 14 January 2021 but has not yet been published. The deadline set for companies to communicate information on their beneficial owners is 15 March 2021.

## **Monitoring**

According to the Guidelines, Firms should ensure that their approach to transaction monitoring is effective and appropriate and must keep their CDD information up to date.

## **AML/CTF Training**

Finally, the Guidelines set out provisions and requirements for AML/CTF training to be provided to Firms' personnel. Particular attention is given to the knowledge of internal procedures, identification and handling of suspicious transactions, company-wide risk assessment and how it affects the daily work of employees.

## **2) Title II**

Title II is the sector-specific section, which complements the general guidelines under Title I. Title II relates to crowd-funding platforms, corporate finance, account information service providers (AISPs) and payment initiation services providers (PISPs), and currency exchange firms.

## **WHAT NEXT?**

The Guidelines will be translated into all official EU languages and published on the EBA's website. Within two months from the date of publication, the national Authorities must report if their practice already complies with the Guidelines or if they intend to comply in the future, providing appropriate explanations for any non-compliance.

Even in case of Guidelines are primarily directed at Firms, the national Authorities are expected to comply by incorporating the Guidelines into their practices as appropriate, such as by amending their legal framework or supervisory procedures.

The Guidelines will become applicable three months after they are published in all EU official languages. As expressly stated in Guidelines nos. 1 and 9, "*competent authorities and financial institutions must make every effort to comply with the Guidelines*" and "*Competent authorities should use these guidelines when assessing the adequacy of firms' risk assessments and AML/CFT policies and procedures.*"

Therefore, it will be advisable for all Firms to start assessing and verifying whether the Guidelines are fully consistent with their procedures and internal processes with particular regard to: (i) risk factor identification; (ii) risk assessment; (iii) the process for identifying beneficial owners; (iv) simplified due diligence measures; (v) classification of cases triggering enhanced customer due diligence; (vi) effective monitoring of transactions; and (vii) scope of AML/CTF training.

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