

Response to the EBA consultation on its draft risk factors guidelines

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Amendments to title I: 'Subject matter, scope and definitions'

Question 1: Do you have any comments with the proposed changes to the Definitions section of the Guidelines?

No answer.

Amendments to title II: 'Assessing and managing risk: general'

Question 2: Do you have any comments on the proposed amendments to Guideline 1 on risk assessment?

No answer.

Question 3: Do you have any comments on the proposed amendments to Guideline 2 on identifying ML/TF risk factors?

No answer.

Question 4: Do you have any comments on the proposed amendments and additions in Guideline 4 on CCD measures to be applied by all firms?

Regarding **guidance 4.38**, we would highlight that art. 45 of the Directive requires obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies and procedures for sharing information within the group for AML/CFT purposes. However, it does not require those obliged entities to specifically identify customers common to several group entities. We are concerned that guidance 4.38 could lead to the idea of a centralised database for such groups with an obligation to identify customers shared between several entities within the same group. This is not consistent with the current European legislation and would prove problematic for most groups, which do not have such centralised customer databases.

Insurance Europe would recommend amending guidance 4.38 (e) to clarify that the risk based approach must be applied to these data-sharing requirements: under a risk based approach, only relevant customer information must be shared among companies that are part of the same group, such as higher-risk and FIU-reported customers/ parties. The creation of a single database with all customers information is not a viable solution as the differences in AML/CTF laws between Member States are too broad.

Question 5: Do you have any comments on the amendments to Guideline 5 on record keeping?

No answer.

Question 6: Do you have any comments on Guideline 6 on training?

No answer.

Question 7: Do you have any comments on the amendments to Guideline 7 on reviewing effectiveness?

No answer.

Amendments to title III: 'Sector specific guidelines'

Questions 8 to 11, 13, and 15 to 20 relate to guidance which is not (directly) relevant to insurers.

Question 12: Do you have any comments on the proposed amendments to Guideline 12 for wealth management?

No answer.

Question 14: Do you have any comments on the proposed amendments to Guideline 14 for life insurance undertakings?

Insurance Europe welcomes the updated guidance for life insurers: it is indeed particularly important for the AML/CFT regulatory framework to be adapted to the specificities of the insurance sector, including the lower risk of ML/TF.

We note that guidance 14.7 reduces the risk-reducing factors related to the product:

"I) has conditions limiting the availability of funds that must be met to benefit from tax relief."

There can be other conditions to be met to benefit from tax relief, that can also refrain the use of the product for money laundering purposes. It is therefore unnecessary to restrict the scope of this risk-reducing factor.

We note that **guidance 14.16** amends the current guidance 190, by including a reference to the beneficiary. We would advise against such an amendment, as it is not in line with the corresponding provisions in the second paragraph of article 13 (5) of the fifth AML directive (2015/849):

"With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned."

It therefore seems the updated guidance goes further than what is required under the fifth AML Directive, which could potentially create issues in some jurisdictions where the transposition was based on the assumption that the beneficial owner in question is the beneficial owner of the purchaser.

Guidance 14.16 could be further clarified with the addition of the following sentence:

"If the assigned policy solely serves as a collateral for a loan or source for redemption and interest payments, the third party is not the beneficial owner as the transaction is not being conducted on his/her behalf and to his/her benefit."



Beyond the amendments made to the guidelines, it is important for the ESAs to keep in mind a number of key points when finalising the update:

- Whilst prohibited in certain markets, cash payments are still not necessarily unusual in some markets, where it is no uncommon to pay premiums in cash at the post office for example
- anonymity is not usually possible in European insurance contracts

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