



The European Federation of Insurance Intermediaries  
La Fédération européenne des intermédiaires d'assurances

## BIPAR RESPONSE

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**Consultation on the Joint 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 the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions**

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*BIPAR is the European Federation of Insurance Intermediaries. It groups 52 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.*

*Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.*

*BIPAR is a member of the World Federation of Insurance Intermediaries (WFI).*

BIPAR welcomes the opportunity provided by the ESAs to comment on the Joint Guidelines under Articles 17 and 18(4) of Directive 2015/849. BIPAR supports every reasonable, proportionate and realistic actions which can prevent money laundering in the life insurance sector and therefore welcomes initiatives taken at EU and international level in this respect. BIPAR already had the occasion to express its views on this topic, including through communications to the Financial Action Task Force and to the European Commission during the legislative process on the adoption of Directive 2015/849. It is important that European anti-money laundering requirements take into account the importance of the activity (and to a certain extent the size of the entity and the characteristics of the activity, in order to remain proportional). The risk-based approach and the proportionality principle must be clearly established and the guidelines must be in line with the FATF Risk-based approach guidance.

The key element for intermediaries is to ensure that in order to avoid double work and administrative burden, a division of tasks between the insurer and the intermediary must be clearly established. It is important to leave room for the parties in the sector to organise themselves in the most efficient way.

More in particular, BIPAR identified in the consultation the elements listed below.

## **Title II – Assessing and managing risk – General part**

16. Other sources of information firms may consider in this context may include, among others:
- the firm's own knowledge and professional expertise;
  - information from industry bodies, such as typologies and emerging risks;
  - information from civil society, such as corruption indices and country reports;
  - information from international standard-setting bodies such as mutual evaluation reports or legally non-binding black lists;
  - information from media sources, such as newspaper reports;
  - information from commercial organisations, such as risk and intelligence reports; and
  - information from statistical organisations and academia.

BIPAR comments: the draft guidelines indicate that information may come from newspaper reports. This may lead to legal uncertainty as it is not known how judges in civil cases will use and interpret the guidelines and in this respect information coming from newspapers can sometimes be interpreted from different perspectives.

19. Risk factors that may be relevant when considering the risk associated with a customer's or their beneficial owners' business or professional activity include:
- Does the customer or beneficial owner have links to sectors that are associated with higher corruption risk, such as construction, pharmaceuticals and healthcare, arms trade and defence, extractive industries and public procurement?
  - Does the customer or beneficial owner have links to sectors that are associated with higher ML or TF risk, for example certain Money Service Businesses, casinos or dealers in precious metals?
  - Does the customer or beneficial owner have links to sectors that involve significant amounts of cash?
  - Where the customer is a legal person, what is the purpose of their establishment?
  - Does the customer have political connections, for example, are they a Politically Exposed Person (PEP), or is their beneficial owner a PEP? Does the customer or beneficial owner have any other relevant links to a PEP, for example, are any of the customer's directors PEPs and if so, do these PEPs exercise significant control over the customer or beneficial owner? Where a customer or their

beneficial owner is a PEP, firms must always apply enhanced due diligence measures in line with Article 20 of Directive (EU) 2015/849.

- Does the customer or beneficial owner hold another public position that might enable them to abuse public office for private gain?
- Is the customer 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?
- Is the customer a credit or financial institution from a jurisdiction with an effective AML/CFT regime and is it supervised for compliance with local AML/CFT obligations?
- Is the customer a public administration or enterprise from a jurisdiction with low levels of corruption?
- Is the customer's or their beneficial owner's background consistent with what the firm knows about their former, current or planned business activity, their business' turnover, the source of funds and the customer's or beneficial owner's source of wealth?

BIPAR comments: numerous risk factors are listed in this section but the guidelines do not differentiate for requirements for small financial services firms whose products they advise on by their nature and characteristics are lower risk products for use for money laundering.

20. The following risk factors may be relevant when considering the risk associated with a customer's or their beneficial owners' reputation:

- Are there any adverse media reports about the customer, for example are there any allegations of criminality or terrorism (proven or not) against the customer or their beneficial owners? If so, are these credible? Firms should determine the credibility of allegations on the basis of the quality and independence of the source data and the persistence of reporting of these allegations, among others.
- Is the customer, beneficial owner or anyone associated with them subject to an asset freeze due to criminal proceedings or allegations of terrorism or terrorist financing?

Does the firm have reasonable grounds to suspect that the customer or beneficial owner or anyone associated with them has, at some point in the past, been subject to such an asset freeze?

- Does the firm know if the customer or beneficial owner has been subject to a suspicious activity report in the past?
- Are there suggestions that the customer or beneficial owner or anyone associated with them may have handled the proceeds from crime?
- Does the firm have any in-house information about the customer's or their beneficial owner's integrity, obtained, for example, in the course of a long-standing business relationship?

BIPAR comments: It should be clearly indicated that these risk factors would not be relevant to all firms.

21. The following risk factors may be relevant when considering the risk associated with a customer's or their beneficial owners' nature and behaviour:

- Does the firm have any doubts about the veracity or accuracy of the customer's or beneficial owner's identity?
- Are there indications that the customer might seek to avoid the establishment of a business relationship?
- Is the customer's ownership and control structure transparent and does it make sense? If the customer's ownership and control structure is complex or opaque, is there an obvious commercial or lawful rationale?
- Does the customer issue bearer shares or have nominee shareholders?
- Is the customer a legal person or arrangement that could be used as an asset holding vehicle?
- Is there a sound reason for changes in the customer's ownership and control structure?
- Does the customer request transactions that are complex, unusually or unexpectedly large or have an unusual or unexpected pattern without apparent economic or lawful purpose or a sound commercial rationale? Are there grounds to suspect that the customer is trying to evade certain thresholds?

- Does the customer request unnecessary or unreasonable levels of secrecy? For example, is the customer reluctant to share CDD information, or do they appear to disguise the true nature of their business?
- Can the customer's or beneficial owner's source of wealth or source of funds be easily explained, for example through their occupation, inheritance or investments?
- Does the customer use their products and services as expected when the business relationship was first established?
- Where the customer is a non-resident, could their needs be better serviced elsewhere? Is there a sound economic or lawful rationale for the customer requesting the type of financial service sought?
- Is the customer a non-profit organisation whose activities could be abused for terrorist financing purposes?

BIPAR comments: It should be clearly indicated here as well that these risk factors would not be relevant to all firms.

41. To the extent permitted by national legislation, firms may apply simplified customer due diligence (SDD) measures in situations where the ML/TF risk associated with a business relationship is low. SDD is not an exemption from any of the CDD measures; however, firms may adjust the amount, timing or type of each or all of the CDD measures in a way that is commensurate to the low risk they identified.

BIPAR comments: The guidelines list numerous Simplified Customer Due Diligence (SCDD) measures which firms may apply, but it makes no reference to exemptions for specified products. Annex II of the Directive makes a reference to specified products such as pensions and life policies under certain premium levels. The guidelines should specify the exemptions for specified products.

## **Title III – Sector specific comments**

### **Chapter VII – Sectoral Guidelines for life insurance undertakings**

177. The following factors may indicate higher risk:
- flexibility of payments, for example the product:
    - i. allows payments from third parties;
    - ii. allows high value or unlimited value premium payments, overpayments or large volumes of lower value premium payments;
    - iii. allows cash payments.
  - ease of access to accumulated funds, for example the product:
    - i. allows partial withdrawals or early surrender at any time, with limited charges or fees;
    - ii. has a 'free look' 22 provision (these are sometimes known as 'cooling off periods').
  - negotiability, for example the product:
    - i. can be traded on a secondary market;
    - ii. can be used as collateral for a loan.
  - anonymity, for example the product facilitates or allows anonymity of the customer.

BIPAR comments: This paragraph refers to payments from third parties but this does not indicate per se a higher risk (example of parents paying for a life insurance contract for their children for instance).