

Credit Union Development Association - Consultation Paper CP128 - Anti-Money Laundering & Countering the Financing of Terrorism Guidelines for the Financial Sector

CBI Questions				
CUDA	1. Are there any significant ambiguities in the text of the Guidelines?	While there were no apparent ambiguities in the guidelines, CUDA credit unions are anxious that there is greater clarity in a number of areas. We will reflect further in submission below under the relevant sections. Credit Unions, refer to account holders as "Members" and there are approximately 255 credit Unions with approximately 3 million credit union members in Ireland. In view of the fact that sectoral guidance is no envisaged, can "members" also be included in content Eg Customers/Members		
CUDA	2. What, if any, are the other areas that should be covered in the Guidelines or in future guidance?	As CP128 has published prior to the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019, guidance. Is it intended that CBI will include further guidance in this area in final guidelines?		
CUDA		Part of the Beneficial Owners regulatory requirements will be to establish the beneficial owners of financial institutions including beneficial owners of credit unions. For the purposes of the Regulations, a "beneficial owner" is a person who ultimately <u>owns or controls</u> the relevant entity, in this case the credit union. In complying with these regulations, entities will be obliged to record the information in respect of each director and the chief executive officer/manager in the Register as its beneficial owners. Part of the requirement is to record <u>residential address</u> . There are significant security concerns at recording residential address information in particular for credit union CEOs as this could pose potential security risk to them and their families.		
CUDA		*While corruption risk is mentioned a number of times in the guidance, there is no reference to the Criminal Justice (Corruption Offences) Act 2018		
CUDA		*"As the Guidelines do not replace the guidance published by ESAs and FATF, firms should ensure that they are familiar with and have regard to the guidance published by these bodies ." It would be helpful if all guidance and CBI expectations were included in one guidance document that would include ESA & FATF rather than having to reference various guidance, leading to various interpretations and inconsistency		

CUDA	3. With reference to specific sections, what other significant factors or examples could be included in the Guidelines?	<p>CUDA welcome 4.1 Risk-Based Approach. Credit Unions in general have a lower risk model due to limited product range,</p> <p>*savings limit (100K),</p> <p>*limited membership and geographical reach under Credit Union Act (Common Bond), so generally inherent risk will be lower as a result.</p> <p>*CUs ordinarily do not conduct occasional transactions, members must become a member with completion of CDD prior to conducting transactions</p> <p>Operationally, it would be most helpful to get more understanding of CBI expectations in applying risk-based approach in lower risk FIs.</p>			
CUDA	Question 4. What are the significant issues /or concerns or unintended consequences that might arise due to the content of the Guidelines?	No one point of reference as per Q2 various guidance EG ESA/FATF and CBI guidance are individual documents, all of which are relevant for AML compliance.			
CUDA	5. The Central Bank has not included prescriptive/definitive examples of documentation that would satisfy customer identification and verification obligations. While firms are required to take a risk based approach, the maintenance of such a list in an ever-evolving environment may inhibit firms from using new technologies and/or other innovative solutions. However, if you are in favour of a prescriptive list, please provide details of documentation to be included, the rationale for its inclusion, and details of how such a prescriptive list could be "future proofed" in the rapidly changing technological environment that firms and supervisors now operate in.	<p>CUDA are not in favour of a prescriptive list, with the expectation of emerging technologies but also for the ease and convenience of existing and potential account holders. However we are of the view that the ongoing issue with regard to the inability to use the Public Services Card as a form of identification needs to be resolved. The Guidelines reference the requirement for "financial inclusion" yet frequently potential members of the credit union do not have standard identification documents i.e. passport or driving licence. It is important to support not just financial inclusion but also social inclusion in providing financial services to members. Impacted persons will include older people, unemployed, low-income families, members with disabilities & young people</p>			
Respond	Document Reference	Requested Change	Rationale for change	Other Comment	

CUDA	4.1 Risk-Based Approach	CUs welcome inclusion of risk based approach particularly <i>"benefits of financial inclusion"</i> and that discretion will be afforded for designated person to do their own risk assessment in relation to specific categories.	This will not just be applicable to financially excluded but also other low risk categories Eg elderly persons, people in nursing home care and others who may not have such standard documentation such as passport and driving licence. Potential account holders who are transitioning from moneylenders to "Personal Micro-credit Loans" are unlikely to have standard ID&V.	Credit Unions are central to providing financial services to many members who find themselves on the margins for comprehensive financial services. Once the expected business relationship establishes the nature of transaction amounts and that monitoring is factored into procedures, then discretion needs to remain with designated person to make best judgement on behalf of vulnerable persons.	
CUDA	4.1 Risk-Based Approach	Include how Central Bank's AML inspections and expectations may change to reflect the new guidelines	This would enable Fish to better prepare for AML inspections		
CUDA	4.2 Business-wide Risk Assessment	The guidelines are quite general and high level, more information around nature, scale and complexity would bring greater clarity. <i>"Firms should rely on their assessment of the risks inherent in their business to inform their risk-based approach to the identification and verification of an individual customer"</i> .	It will be important that CBI AML inspections will equally factor in a risk based approach particularly where designated persons adequately document their rationale for accepting best ID documentation available for providing services to account holders in the low risk categories. Some may be personal account holders or small business accounts.		
CUDA	4.4.1 Customer's Business or Professional Activities	<i>Further Guidance on - "Holds another prominent position or enjoys a high public profile that might enable them to abuse this position for private gain. Eg Senior local or regional public officials & Decision-making members of high profile sporting bodies"</i>	Has CBI considered how this information can be consistently captured. Information about these individuals is unlikely to be known in their capacity as regular account holders with financial institutions. If however there are association/club accounts, the executive members of the association/club will already be captured as part of CDD.	There are increasing concerns at the wider reach of persons that need to be monitored in compliance with these guidelines and the time and resources requirements. Naturally, the designated persons will report, when and if they learn of any suspicion relating to this broader range of account holders, however this information may not be forthcoming, unless activity or transactions are inconsistent with normal expected business relationship. If such account holders are intent on obscuring their behavioural activity, it will remain difficult to detect. Also, clarity on the categories of persons needs to be more specific.	

CUDA	4.4.1 Customer's Business or Professional Activities	<i>Individuals that are known to influence the government and other senior decisionmakers;</i>	If an existing or new account holder has an account in their personal capacity, it is most unlikely that an FI would know of any new position of influence in other aspects of their employment, social & recreational lives unless there was changes to pattern of business relationship. It is unlikely that an institution would have insight into internal workings of such organisations including government bodies. Also, some offices may have confidential nature to their role and function.	Data Protection 2018 Act - Data Minimisation - only ask for the data you need!! Designated bodies must be ultra careful not to exceed information request and comply with obtaining information " <i>lawfully and fairly</i> ". Account holders are very aware of their rights under GDPR. The environment of challenge is more evident from account holders and FI are mindful that all legislation is respected.	
CUDA	4.2.1 Sources --" their risk-based approach to the identification and verification of an individual customer"	Credit Unions as previously stated, provide essential services for members who otherwise could potentially become financially excluded. Currently FIs cannot accept the Public Services Card (PSC), by way of proof of ID for AML Compliance since FIs are not " <i>specified bodies</i> " under the Social Welfare Act. This has also posed a significant stumbling block to Credit Unions providing Personal Micro-Credit (PMC) Loans, and also senior citizens who currently may not have standard ID documentation.	A concerted effort needs to be made by all organs of the State politically and otherwise to address this anomaly so that if a potential or existing account holder offers the PSC by way of ID, the FI should be in a position to accept it. The PMC loan project is part of the Programme for Government and was set up to provide alternative credit for financially excluded borrowers who are currently served by money lenders, many of whom are unregulated and charge excessively higher interest rates. Credit Unions make every effort to provide alternative credit facilities, this effort is significantly hampered by non-use of PSC		
CUDA	4.8.2 Categorising Business Relationships and Occasional Transactions	Firms should decide on the most appropriate way to categorise risk. This will depend on the nature and size of the firm's business and the types of ML/TF risk to which it is exposed. Footnote states that firms "may categorise risk as high, medium and low, or variations of the similar ratings"	Risk categories should match up with the Central Bank's categories, e.g. low, medium-low, medium-high, high, ultra-high as set out in the REQs		
CUDA	5.2 Customer Due Diligence (CDD)	Need to keep <i>up to date ID and Address</i> - Clarify?	More guidance on what constitutes "up-to-date" would be helpful - e.g. when does an address "expire" or when does proof of address "expire" if the member has not changed their address?	Under risk-based approach, if account holder remains at same address, is known to the designated person, transaction or business relationship has not changed, discretion should remain with the designated person, as to when and if CDD updates are needed. It will be important however that this is set out in AML policy, which is renewed and updated on at least annual basis.	

CUDA	5.4 Simplified Due Diligence (SDD)	In credit unions SDD will remain applicable for many account holders. A high percentage of account holders will range from low income/social welfare to medium income bracket in CUs. CUs do not generally have business accounts and beneficial ownership(25% shareholding) will not impact CUs to the extent of other Fish. There is no differentiation or insight as to CBI expectations from supervisory perspective across the wider diversity of FIs.	The guidelines has a one size fits all approach, it would be helpful if examples could be provided for smaller FIs		
CUDA	5.6 EDD in relation to Politically Exposed Persons (PEPs)	Provision of greater clarity as to categories of Irish Domestic PEPs. Examples of who are likely to fall within this category would be worthwhile	Achieve greater consistency across the financial services sector on what categories constitute domestic PEPs and where EDD should be carried out		
CUDA	6.4 Three Lines of Defence Model	Further Guidance for MLROs on how 3 lines of defence model.	In a 3 lines of defence model, is CBI of the view that the MLRO role form part of 2nd Line of Defence?		
CUDA	7.6 Tipping Off	Include that there is no obligation on designated person to hand over any AML/CTF related documentation under a subject data access request that could undermine a Garda Investigation-- S49 CJA <i>"the firm shall not make any disclosure that is likely to prejudice the investigation"</i> .	With heightened awareness of GDPR requirements, it will be useful to give affirmation of this specific requirement		
CUDA	9.2.2 Customer Information Firms should keep adequate records, including: ☑ All documentation and information obtained for the purposes of identifying and verifying a customer, person(s)	Include recognition for requirements of GDPR and how this guidance aligns Data Protection Act 2018	A schedule of retention times for all documentation relating to AML/CFT/FS would give consistency in application of requirements across the Fish		
CUDA	9.2.4 Internal and External Suspicious Transaction Reports Firms should keep adequate records, including	Include outline of retention periods for STRs both reported and not reported include timelines under Section 55 of the Act of 2010 (amended) - New powers for Gardai	as above		
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