



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

**Feedback Statement on  
CP128 – Consultation on the  
Central Bank of Ireland’s Anti-  
Money Laundering and Countering  
the Financing of Terrorism  
Guidelines for the Financial Sector  
September 2019**

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# Introduction

1. On 21 December 2018 the Central Bank of Ireland (the “Central Bank”) published CP128, a Public Consultation paper on the Central Bank’s draft Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (the “Guidelines”). The closing date for responses to CP128 was 5 April 2019. The 17 responses received comprised 287 comments in total.
2. The purpose of the Guidelines is to set out the expectations of the Central Bank in respect of credit and financial institutions (“Firms”) compliance with their AML/CFT obligations as set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “CJA 2010”), following the transposition of the EU’s Fourth Anti-Money Laundering Directive (“4AMLD”) into Irish Law<sup>1</sup>. The Guidelines incorporate expectations set out in previous Central Bank AML/CFT Sectoral Reports, AML/CFT Bulletins, and relevant European Supervisory Authority Guidelines. In addition, the Guidelines set out the Central Bank’s expectations with regard to the additional obligations imposed on Firms following the transposition of 4AMLD.
3. CP128 invited responses from interested stakeholders, including Firms, representative bodies, industry consultancy firms and service providers, in relation to five specific questions. In addition, CP128 also invited respondents to provide general comments on the draft Guidelines.
4. The purpose of this Feedback Statement is to provide information regarding a number of amendments made to the final Guidelines, following a review by the Central Bank of the submissions received in response to CP128. In addition, this Feedback Statement provides a rationale as to why amendments were not made to the Guidelines, in certain instances. All submissions received are published on the Central Bank’s website.

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<sup>1</sup> The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018, which transposed 4AMLD, came into force on 26 November 2018.

# Summary of the submissions received in response to the five specific questions

CP128 invited respondents to consider five specific questions in addition to any general comments or suggested amendments to the Guidelines. A summary of the key issues and common themes identified by the Central Bank, in its review of the responses received to these questions are set out below, together with the Central Bank's responses in respect of these issues.

- **CP128 Question 1**

*Are there any significant ambiguities in the text of the Guidelines?*

Respondents identified some potential ambiguities in the text of the Guidelines, particularly in relation to the verification of beneficial owners, and third party reliance. The majority of the amendments proposed by respondents have been accepted, and are reflected in the final Guidelines.

- **CP128 Question 2**

*What, if any, are the other areas that should be covered in the Guidelines or in future guidance?*

A number of respondents requested further information relating to pooled accounts and sought more detailed guidance in relation to the requirements related to Correspondent Relationships. The Central Bank is of the view that it would be inappropriate to provide guidance on such matters as it would go beyond the scope of the CJA 2010. The European Supervisory Authorities' Risk Factors Guidelines<sup>2</sup> provide high-level guidance in relation to pooled accounts, which may be of assistance to Firms.

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<sup>2</sup><https://eba.europa.eu/documents/10180/1890686/Final+Guidelines+on+Risk+Factors+%28JC+2017+37%29.pdf>

- **CP128 Question 3**

*With reference to specific sections, what other significant factors or examples could be included in the Guidelines?*

In addressing this question, a number of respondents provided factors and examples that contained sector specific feedback. As the Guidelines are not intended to be sector specific these responses have not been incorporated into the final Guidelines.

- **CP128 Question 4**

*What are the significant issues/or concerns or unintended consequences that might arise due to the content of the Guidelines?*

Respondents did not identify anything of significance beyond the suggested amendments sought under question 1 above.

- **CP128 Question 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.*

Respondents were broadly supportive of the removal of prescriptive/definitive examples of documentation that would satisfy customer identification and verification obligations.

# Summary of the general comments and suggested amendments received

In addition to the responses to the five specific questions posed in CP128, a number of general comments and suggested amendments were also received. A summary of the key issues and common themes identified by the Central Bank, in its review of the general comments and suggested amendments received are set out below, together with the Central Bank’s responses in respect of these issues.

Respondents were broadly supportive of the content of the draft Guidelines. Some respondents sought further detail on particular sections of the CJA 2010, while some sought guidance on matters that are not specifically referred to within the CJA 2010. Firms are reminded that where the Guidelines have not provided guidance on a specific section of Part 4 of the CJA 2010, it is because that section of the CJA 2010 already provides clear and detailed information on the obligations of Firms, and accordingly further guidance is deemed unnecessary. Firms are also reminded that the Guidelines cannot address matters beyond the scope of the CJA 2010.

<b>Topic</b>	<b>Key issue</b>	<b>Summary of Submissions</b>	<b>Central Bank Response</b>
General Comment	Guidance issued from more than one source	“As the Guidelines do not replace the guidance published by the European Supervisory Authorities (“ESAs”) or the Financial Action Task Force (“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 guidance rather	While the Central Bank cannot issue consolidated guidance as suggested, as both FATF guidance and ESAs guidance is owned and published by the respective bodies, the Central Bank did have

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		than having to reference various guidance, leading to various interpretations and inconsistency	regard to the guidance published by the FATF and ESAs, and incorporated elements of that guidance into the Guidelines.
General Comment	UK Guidelines differ significantly	It would be helpful if the guidelines would continue to have a certain level of consistency with the UK's JMLSG guidelines.	The Guidelines seek to assist Firms in understanding their AML/CFT obligations under Part 4 of the CJA 2010; therefore, it is not possible to align them with the UK's equivalent guidance, which is based on UK law.
General Comment	Senior Management/MLRO Approval	There is no consideration for the sole trader environment. There will be an expectation on them to meet these requirements and they should be provided with the guidance to do so. The Guidelines should include reference to how Sole Traders should obtain "Senior Management Approval" for each of the stages that requires such approval.	The Guidelines apply to all Firms, and this includes Firms that have a single person management structure for example sole traders or single member companies. Similar to all other Firms, a single member Firm's review of its AML/CFT issues, procedures and

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			<p>matters typically noted as requiring sign off, escalation or approval by senior management, should be documented and evidence of this review should be retained.</p>
4.2.1 - Sources	<p>Use of the Public Services Card (PSC) as a means of identification.</p>	<p>Credit Unions provide services to members who could otherwise become financially excluded, however credit and financial institutions cannot accept the PSC as a form of identification. The Guidelines reference the requirement for "financial inclusion" yet frequently potential members of the credit union do not have standard identification documents such as a passport or driving licence. It is important to support not just financial inclusion but also social inclusion in providing financial services to members.</p>	<p>The Social Welfare Consolidation Act 2005 (as amended) (the Act) governs use of the PSC. Schedule 5 of the Act lists the "specified bodies" who can request a person to produce his or her PSC for the purposes of a transaction. Draft legislation which proposes expanding the purposes for which the public services card may be used has not yet been passed - if such legislation is passed, Firms should review the legislation as enacted to ascertain whether it</p>



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			allows the use of the public services card for CDD purposes.
Section 4.4.1 - High risk customer	Under examples of high risk customer there is reference to individuals who hold another prominent position or enjoys a high public profile that might enable them to abuse this position for private gain.	<p>If an existing or new account holder has an account in their personal capacity, it is most unlikely that a Firm would know of any new position of influence in other aspects of their employment, social and recreational lives unless there were changes to the pattern of a business relationship.</p> <p>The text itself needs clarification as to what these roles are as it is very open ended.</p> <p>How would an institution have visibility into internal workings of other groups?</p>	The Central Bank cannot be more prescriptive as to what roles might be included as these will vary from sector to sector and Firm to Firm. A determination as to what roles are included should be included within the Firm's own risk assessment, allowing for case-by-case review depending on the customer.

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Section 5.2 - Customer Due Diligence	Number of unintended consequences resulting from language used	<p>Examples include:</p> <p>“The current wording implies that verification of beneficial owners is optional. Section 33(2) (b) does not offer any exemption to verification of beneficial owners. It only offers flexibility in the measures to be taken, and the extent to which the identity of the beneficial owner's identity is verified.”</p> <p>“There is no provision in section 40 for accepting a reliance arrangement with a Firm not supervised for requirements equivalent to 4MLD. This is suggested in the wording through the either/or options presented.”</p>	Section 5.2 of the Guidelines has been amended based on the submissions received.
Section 5.2 - Customer Due Diligence	Request for further information in relation to Section 33(6)	There is no reference to section 33(6) in this section, which imposes a new obligation on Firms prohibiting the processing of transactions prior to completion of verification of the customer.	Section 5.2 of the Guidelines has been amended in order to provide clarity on this point, and now includes a reference to section 33(6).

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Section 5.2 - Customer Due Diligence	Query relating to persons purporting to act on behalf of a customer	Clarification is required to 'persons purporting to act on behalf of the customer' to avoid unintended consequences of the application of CDD measures to parties who ordinarily act on behalf of the customer, for example employees of regulated financial institutions or public limited companies acting as signatories (i.e. we would consider these persons as those who ordinarily act on behalf of the customer as opposed to e.g. a power of attorney who does not ordinarily act but rather is purporting to act).	The Guidelines have been amended based on the submissions received.
Section 5.2 - Customer Due Diligence	Returning funds to customer	A “one-size fits all” approach across all products/services such as suggested may be problematic in some scenarios and may also result in assisting with layering transactions.	The Guidelines have been amended based on the submissions received.
Section 5.2 - Customer Due Diligence	Request for insert relating to certification of documentation	It is common practice for some Firms to require a higher standard to evidence the identification and verification of higher risk customers. Principles and practices can vary substantially between Firms. We recommend the proposed Guidance clarify that Firms can apply a risk based approach in meeting requirements by e.g. accepting uncertified documents for standard risk customers or where face-to-face. Additionally language requirements for certification and/or	As CDD-related risks are not the same for all Firms, Firms should determine what best mitigates the CDD-related risks to which they are exposed.

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		notarisation should be provided given stakeholder engagement outside of Ireland.	
Section 5.6 - EDD in relation to Politically Exposed Persons (PEPs)	Politically Exposed Persons - Domestic	Provision of greater clarity as to categories of Irish Domestic PEPs. Achieve greater consistency across the financial services sector on what categories constitute domestic PEPs and where EDD should be carried out.	The Guidelines provide guidance on EDD in relation to PEPs at section 5.6. It would not be appropriate for the Central Bank to confirm what roles constitute prominent public functions. It should be noted that under the EU's Fifth Anti-Money Laundering Directive, Member States will be obliged to issue a list indicating the exact functions which qualify as prominent public functions.
Section 5.6 - EDD in relation to Politically Exposed	Classification of PEPs as high risk	The guidelines state that Firms should put customers or beneficial owners who are PEPs into a higher risk category. This is contrary to other regulatory guidance in relation to PEPs, which recognise that not all PEPs pose an ongoing higher risk of money laundering. Section 37 of the Act requires certain EDD measures to be undertaken for all	Section 37 of the CJA 2010 requires Firms to apply certain EDD measures to all customers which they know or have reasonable grounds to believe are PEPs (or are immediate family

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Persons (PEPs)		identified PEPs however, it does not require all PEPs to be categorised as high risk.	members or close associates). However, a Firm can have separate categories for high risk PEPs and higher risk PEPs if they so wish, provided that section 37 is complied with. Firms should document the rationale and procedures if such an approach is taken.
Section 8.8 - Training Assessment	Training requiring assessment at the end	This Section is too onerous and is not feasible. We question how training conducted in “classroom” style can include an assessment or examination?	The Guidelines have been amended to remove reference to an assessment 'at the end' of training session, on foot of the submissions received. Clear evidence should be available to demonstrate that the individuals who have undergone training understand their obligations under CJA 2010.

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Section 9 - Record Retention	Record retention periods	It would be helpful for the Guidelines to clarify the retention/deletion time periods for each record category.	The time periods in respect of the retention/deletion of records are provided for in Section 55 of the CJA 2010, and guidance has therefore not been provided on this point.
Section 5.2.2. and 5.6 Beneficial Ownership and PEPs	More detail sought as to what the defined obligations are for any entity when they have to comply with the requirements for PEPs, Beneficial ownership, connected persons and related parties	<p>We would welcome more detailed guidance and possible case studies or examples as to what the defined obligations are for any entity when they have to comply with the requirements for PEPs, Beneficial ownership, connected persons and related parties.</p> <p>A consistent approach should be developed in these areas so that any reporting entity has the relevant information as to what is expected of it to comply with both the AML and data protection issues. This is important for any person that is associated with or related to a PEP and is being risk assessed for ML/FT, based on that connection. That person may not know that they are being made subject to an enhanced due diligence procedure because they are linked to a PEP. Similarly, it applies to “Connected persons” and “Related Parties”.</p>	<p>Chapter 3 of the CJA 2010 sets out the customer due diligence obligations in respect of PEPs and beneficial ownership. It would not be appropriate for the Central Bank to confirm what roles constitute prominent public functions and accordingly further guidance has not been provided on this point.</p> <p>It should be noted that under the EU’s Fifth Anti-Money Laundering Directive, Member States will be obliged to issue a list indicating the</p>

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			exact functions, which qualify as prominent public functions.
Section 10.3.3 and 10.3.4. Screening customers against sanctions lists	More detail sought in respect of sanctions lists	“It would be beneficial if it could be outlined what sort of sanction lists exist and when they are used and how they are used. Again, this relates to the rights of individuals to be informed as to what is occurring with the processing of their personal data, whom it is being disclosed to...”	Links to the consolidated UN Sanctions Committees list and the consolidated EU sanctions list are provided at Section 10 of the Guidelines.  The Guidelines have been amended to confirm that the Central Bank is obliged to report true sanctions hits to the European Commission and FIU Ireland.
Section 5.3 Data Protection	Data Protection Impact Assessment	Please note that where the “regtech” solution incorporated new technology that involves the profiling or automated processing of the personal data of a customer database then it will probably require a “Data Protection Impact Assessment”, to be done.”	The Guidelines have been amended on foot of the submission received at Section 5.2 to include a general reference to data protection obligations.
Section 5.3	Screening Against Sanctions Lists	Query as to whether daily screening of customers against financial sanctions lists is compatible with the Risk Based Approach.	It is a criminal offence to provide financial products or services to

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Data Protection			<p>individuals or entities named on EU Financial Sanctions lists – a Risk Based Approach is not compatible with compliance with Financial Sanctions legislation.</p> <p>Screening new and existing customers and payments against the relevant and up to date EU and UN lists helps ensure that Firms will not breach the Financial Sanctions legislation.</p>



# Next Steps

The Central Bank appreciates the engagement with stakeholders in relation to CP128 and, taking into account the various submissions, will now proceed to publish the Guidelines.

September 2019

