



Call for input on ‘de-risking’ and its impact on access to financial services

The call for input on “de-risking” forms part of the EBA’s work to lead, coordinate and monitor the EU financial sector’s AML/CFT efforts. Its objective is primarily to understand why financial institutions choose to de-risk instead of managing the risks associated with certain sectors or customers. This call for input is of interest to stakeholders across the financial sector and its users, as the EBA wants to hear from all groups affected by de-risking.

BACKGROUND INFORMATION FOR RESPONDENTS

Financial institutions, including credit institutions, have to put in place and maintain policies and procedures to comply with their legal obligations. These include policies and procedures to identify and manage the risks to which they are exposed, for example the risk that they may be used for money laundering and terrorist financing (ML/TF) purposes or credit risk. Where a financial institution considers that **it cannot effectively** manage those risks, it may decide to restrict access to or withdraw from providing a particular financial product or service, or servicing a particular customer or category of customers. This is referred to as ‘de-risking’.

The ESAs’ Joint Risk Factors Guidelines (published in 2017 and currently being revised) indicated that a risk-based approach does not require financial institutions to terminate business relationships with entire categories of customers that they associate with higher ML/TF risk, as the risk associated with individual business relationships may vary, even within one category.

The EBA has collected anecdotal evidence that across the EU:

- some respondent banks have had their Correspondent Banking Relationships (CBRs) terminated because of their risk profile. As a result, some have in turn closed customers’ accounts to mitigate these risks, while others have lost access to for e.g., dollar clearing;
- certain categories of customers or businesses that are associated with higher ML/TF risks, for e.g. NGOs or faith organisations, customers who are asylum seekers from high risk jurisdictions, or businesses operating in sectors associated with a higher incidence of corruption and other predicate offences have experienced difficulties accessing banking services;
- some segments of the financial sector (e.g. payment institutions and electronic money institutions) have seen their access to banking facilities restricted.
- This Call for Input aims at identifying the scale of the issue and the challenges caused to a variety of interested parties as a result of de-risking at EU level. In particular, we need to understand why financial institutions choose to de-risk instead of managing the risks associated with certain sectors or customers. We also want to hear from groups affected by de-risking. Therefore, this Call for Input is of interest to stakeholders across the financial sector and its users (e.g. banks, payment institutions and electronic money institutions, NGOs, etc.).

The feedback gathered from this Call will feed into the EBA’s next Opinion on the risks of money laundering and terrorist financing affecting the Union’s financial sector that the EBA is mandated to issue under Art. 6(5) of Directive (EU) 2015/849 that will be published in Q1, 2021. It may also inform other EBA policy outputs.

Submission of responses

To submit your answers, click on the ‘send your comments’ button and submit your responses by 11 September 2020. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the electronic form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

Disclaimer

The questions asked in this call for input are preliminary and will not bind in any way the EBA in the future development of its legal instruments. They are aimed at eliciting discussion and gathering the stakeholders' opinions at an early stage of the process.

QUESTIONS

The EBA invites respondents to answer the questions listed below. Please note that the first set of questions (1 to 5) target institutions that take decisions to de-risk or are considering taking decisions to de-risk, whereas the second set (5-11) target those affected by these decisions. In case a question is not relevant for you, please answer with "Non-Applicable" or "NA".

If you represent a financial institution that has taken decisions or is considering taking decisions to de-risk, please answer the following questions:

1. IN WHICH MEMBER STATE IS YOUR INSTITUTION ESTABLISHED?

NETHERLANDS

2. PLEASE PROVIDE INFORMATION ON THE TYPE OR NATURE OF CUSTOMERS OR CATEGORIES OF CUSTOMERS YOU HAVE DECIDED NOT TO SERVICE AND/OR ON THE FINANCIAL PRODUCTS YOU HAVE WITHDRAWN FROM PROVIDING.

Banks can decide to discontinue services to customers for various reasons. Some services can become outdated, or may no longer be part of the product portfolio due to a change in strategy. A bank may decide for instance to discontinue insurance related products due to a focus on payment services only. The reason to discontinue services can also be business interest as some services may be less profitable.

The reason to discontinue services to categories of customers also has various reasons. Customer focus may shift and a bank can decide that it no longer has the required expertise to service a group of customers. A new focus on sustainability also may entail a decision to discontinue service to certain groups of customers. The increasing focus on regulations may also mean that services are more and more standardized, leaving no possibility to offer tailor-made services to specific customers. So, the decision to discontinue services is not only driven by de-risking .

There are however some examples where banks have decided to discontinue service to certain (groups of) customers due to the fact that the ever increasing set of regulations and the enhanced focus from regulatory authorities makes it almost impossible to manage the risks in relation to ML/TF for these customers. It becomes increasingly difficult to service specific (groups of) customers without an additional risk of sanctions from regulators or investigators due to the increasing regulations. Discontinuation of services is primarily done in relation to customers that belong to professions or engage in activities, that are designated as a higher risk in relation to ML/TF in publications from (inter)national organizations as FATF, EBA, EC, Basel Cie, FIU's, and local regulatory authorities. We see an ever-increasing number of publication, where, often based on one incident, attention is drawn to potential high risk factors. Banks are obliged to act on these risks. But it is often very hard to effectively manage the risks. Higher risks require enhanced due diligence, where the bank must obtain additional information and evidence, which is often hard to obtain. **Banks are for instance struggling which kind of 'evidence' is required while performing an enhanced due diligence in relation to the source of funds and source of wealth from a politically exposed person. It is not clear which documents are required and what type of (independent) evidence must be obtained.** An investigation in the risks in relation to politically exposed persons is time consuming, these persons are often very reluctant to provide information as they feel that this infringes their privacy and the process (including the decision making) requires specialists and senior management. This means that some smaller banks and payment institutions have decided to withdraw services to this customer group.

Other groups of customers that are designated as a higher risk, which is therefore hard to manage are customers that are active in for example cash-intensive sectors, cryptocurrencies, real estate, professional sports, trust services, (such as acting as director of a legal entity, acting as trustee, or providing a correspondence address to a legal entity) and money transfers. Where banks find it difficult to adequately manage the perceived risks they may take the decision not to engage with customers in these sectors as risks and costs are substantial. Furthermore, expectations and interpretation of acceptable customer relationships in the environment banks are operating in, have become more strict.

The increased focus on geographical risks means that some banks are investigating the advisability of providing services to customers that are not resident or established in the country where the bank is licensed or are resident/established in certain countries outside the EU.

PLEASE PROVIDE QUANTITATIVE DATA WHERE POSSIBLE IN SUPPORT OF YOUR RESPONSE (E.G., HOW OFTEN THIS TYPE OF DECISIONS ARE TAKEN PER CALENDAR YEAR, AN ESTIMATE % THIS REPRESENTS IN THE TOTAL NUMBER OF YOUR BUSINESS RELATIONSHIPS, ETC.).

The Dutch banks don't have quantitative data, as the decision not to engage is often taken on a case-by-case basis, and there is no central logging at for example the Dutch Banking Association (NVB) of potential customers that ask for services but that are refused. The decision to terminate an existing

relation is also not centrally logged at the Dutch Banking Association (NVB), as the reasons to terminate often differ: some customers don't react when asked for additional information. Others don't want to provide the information that is necessary in relations to the due diligence measures. This failure means that the banks are not allowed to continue the relation.

3. WHICH RISK FACTORS DOES YOUR INSTITUTION CONSIDER WHEN ASSESSING WHETHER TO WITHDRAW FROM SERVING CERTAIN CUSTOMERS OR CATEGORIES OF CUSTOMERS OR FROM OFFERING CERTAIN PRODUCTS? IN YOUR EXPERIENCE, IS ONE RISK FACTOR MORE IMPORTANT THAN OTHERS? IF SO, WHICH ONE?

As pointed out under 2, there is not one risk factor that is more important than others. The decision to withdraw services will depend on the emphasis that is placed on the risk in publications from (inter)national organizations in relation to the actual possibilities the bank has to adequately manage that risk.

4. WHAT MEASURES (SUCH AS OFFERING ALTERNATIVE PRODUCTS, INCREASING THE PRICE FOR AN EXISTING PRODUCT, OR RESTRICTING THE FEATURES OF AN EXISTING PRODUCT) HAS YOUR INSTITUTION TAKEN TO MITIGATE POTENTIAL DETRIMENT ARISING FROM YOUR DE-RISKING DECISION?

In some instances, banks may decide to increase the price for a product, when the risk seems manageable, but with enhanced due diligence procedures. Enhanced due diligence requires the use of experts, sometimes from outside the bank and the involvement of senior management, which all comes at substantial costs. For some sectors (cash intensive sectors) banks also may decide to limit the amount of cash that can be withdrawn or deposited. Also, the bank can limit the products they grant to a client that are higher risk. For consumers it is hard to limit basic payment services due to European legislation (Payment Accounts Directive).

5. HAS YOUR INSTITUTION RECEIVED ANY COMPLAINTS FROM CUSTOMERS OR PROSPECTIVE CUSTOMERS ON MATTERS RELATED TO DE-RISKING? IF SO, HOW MANY AND WHAT WERE THE TOP-TWO ISSUES RAISED BY THESE COMPLAINANTS?

Some (prospective) customers don't agree with the decision from the bank, claiming that they need banking products to do business. In the Netherlands, banks are not legally obliged to provide products to prospective customers (except for basic payment services to consumers).

If a bank wants to withdraw services for a customer, the customer can complain to an arbitration committee or the courts. In these cases the risks for the bank will be balanced against the importance of the services for the customer. Courts often decide that the interest of the customer must prevail and order the services must be continued.

For this reason the decision to withdraw services is sometimes only taken in relation to new (prospective) customers, while the relation with existing customers is allowed to continue. (Risks in relation to an existing customer may be lower as the bank has already experience with the customer and access to the transaction history.)

In addition it is noted that the level of detail as well as type of information banks are required by inter alia the national supervisory authorities keeps expanding and increasing, whereas the actual usability of said information is in some cases debatable with a view of combatting AML/CFT. Note that particularly stricter demands of said supervisory authorities despite doubts on (practical) applicability often leave institutions in limbo, as they do not perceive said demands as suggestions vis-à-vis the risk-based approach but rather as mandatory. Meanwhile many clients perceive the expanding need for information as an intrusion in their personal lives and a violation of privacy, consequently more often refusing to provide said information. In addition, local privacy authorities are beginning to take notice of such expanding data gathering, and are becoming increasingly critical thereof, citing e.g. data minimalization to challenge such requests of banks for ever more information.

If you or the institution you represent have been affected by de-risking, please answer the following questions:

6. IN WHICH MEMBER STATE IS THE FINANCIAL INSTITUTION THAT DECIDED NOT TO HAVE/WITHDRAW BUSINESS RELATIONSHIP WITH YOU ESTABLISHED?

Not applicable.

7. WHICH FINANCIAL PRODUCT HAVE YOU BEEN DENIED ACCESS TO?

Not applicable.

8. HOW DID IT AFFECT YOU AND WHAT WAS THE CONCRETE IMPACT OF THIS DECISION?

Not applicable.

PLEASE PROVIDE QUANTITATIVE DATA WHERE POSSIBLE IN SUPPORT OF YOUR RESPONSE.

Not applicable.

9. HOW WAS THE DECISION NOT TO HAVE/WITHDRAW A BUSINESS RELATIONSHIP WITH YOU EXPLAINED BY THE FINANCIAL INSTITUTION?

Not applicable.

10. WERE YOU GIVEN AN OPPORTUNITY TO HAVE THIS DECISION REVIEWED AND IF SO, WHAT WAS THE PROCESS INVOLVED WITH WHAT OUTCOME? PLEASE PROVIDE DETAILS.

Not applicable.

11. WERE YOU ABLE TO USE ALTERNATIVE CHANNELS TO ACCESS FINANCIAL SERVICES? PLEASE EXPLAIN.

Not applicable.

TYPE OF ORGANISATION:

- Financial Institutions
- Professional / trade associations
- Consumer associations
- Academics
- NGOs
- Others

IF YOU SELECTED "FINANCIAL INSTITUTIONS", PLEASE SPECIFY THE TYPE HERE:

NVB, Dutch Banking Association

IF YOU SELECTED 'OTHERS', PLEASE SPECIFY HERE:

UPLOAD FILES

More information

DISCLOSE COMMENTS *

yes

no

NAME OF THE ORGANIZATION *

EMAIL *

CONTACTNAME *

PHONE NUMBER *

Verification expired. Check the checkbox again.

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