



CYFA COMMENTS
CYSEC CONSULTATION PAPER CP-02-2020: IMPROVING THE
FACILITATION OF CUSTOMER DUE DILIGENCE WITH INNOVATIVE
TECHNOLOGIES

To: Cyprus Securities and Exchange Commission (CySEC)

Cyprus Fiduciary Association

20 November 2020

Nicosia

Introduction

In relation to the above subject matter, please find below the comments of the Cyprus Fiduciary Association.

Question 1: Do you agree with CySEC's proposal to amend the CySEC AMLD by explicitly incorporating the possibility of using innovative methods for the purposes of conducting CDD as to the NFTF identification and verification of the identity of individuals (natural persons)?

We agree with the suggested proposal and we would also like to see the incorporation of using innovative methods for the purposes of conducting CDD expanded further, for example to the verification of the address of individuals (natural persons)

The suggested amendment [*iv. An innovative method or a combination thereof for the non-face-to-face identification and verification of the identity of natural persons, including without limitation identity verification by means of taking a dynamic real time selfie, and/or of a real time video call*] deals with only one part of the CDD process of a NFTF customer. A methodology is provided for obtaining and verifying the identity of a natural person. However, no methodology is provided for the use of Innovative Methods to obtain and verify the address of a natural person.

A methodology for the acceptance of electronic address verification documents (e.g. electronic utility bills) is necessary and essential even for Face To Face clients who reside in countries where it is not even possible to have a paper format original utility bills as everything is digitised and available only in electronic form. Documents provided could be verified through accepted certified providers for the verification of such documents.

Question 2: Do you agree that the use of such innovative methods should be subject to a risk assessment based on which it is rendered that the ML/TF risks are being addressed on a reasonable, consistent and demonstrable basis?

Yes, we agree that a risk assessment is necessary prior to the introduction and use of innovative methods. This is necessary in order to ensure that the required assurance level will be achieved and that any risk mitigating measures and controls are implemented.

Question 3: Do you agree that the risk assessment performed pursuant to Section 58A of the AML Law should, in addition to the risk factors set out in Annex III and Part IV of the CySEC AMLD, inter alia, include the risk factors mentioned in the ESAs Opinion by also taking the content of the FATF Guidance (including the steps for technical implementation of the Innovative Method), into consideration and the content of CySEC's Circular C399?

Yes, we agree that the risk assessment should also include, as appropriate and relevant, risk factors mentioned in the ESAs Opinion and the designing of the risk assessment should be guided by the FATF Guidance and the content of CySEC's Circular C399.

Question 4: Do you agree with CySEC's intention to refrain from setting an explicit limit in relation to the level of assets to be deposited and the size of transactions involved for an Obligated Entity to be able to use an innovative identification method, provided that such limits will be set by the Obligated Entities in the content of their risk assessment per risk category and be further reviewed on a case by case basis?

Yes, we agree with CySEC's intention to refrain from setting an explicit limit in relation to the level of assets to be deposited and the size of transactions involved. However, we do not agree on the CySEC's expectation that the Obligated Entity must then set such limits, in relation to the level of assets to be deposited and the size of transactions involved, in order to be able to use an innovative identification method. We do not believe that the use of a 'limit' is the appropriate risk mitigating measure for the implementation of an innovative identification method.

Given that before an Innovative Technological Method can be implemented, it is a pre-requisite to apply extensive measures and controls that would provide the necessary assurance for the end result, it appears excessive that it is then also required to set 'limits' in relation to the customers for whom the application of the Innovative Technological Method is allowed, in terms of such customer's 'size of assets' and 'level of transactions'.

Our position is that, at least for the ASP Sector, it would not be meaningful or appropriate to implement such limitation on the use or not of the Innovative Technological Method for Identity verification depending on the customer's size of assets and level of transactions, thus excluding groups of customers from the use of Innovative Methods simply because of the level of assets to be deposited and size of transactions involved.

This is not to say that additional enhanced due diligence measures are not to be implemented depending on each customer's risk factors for example, obtaining additional information for the source and origin of funds, close monitoring of transactions, additional documents and data for the verification of the identity and /or other measures which, based on the customer's risk assessment, should be applied irrespective of the use or not of an Innovative Technological Method for the Identity Verification.

The use of limits and therefore the exclusion of group of customers from the use of the Innovative Technological Method could mean that for the ASP sector the introduction of such system would potentially be not cost-effective if it cannot be used across all groups of customers.

Our position is that an obliged entity should be able to use innovative measures across all clients subject to risk mitigation measures as appropriate and necessary on each case depending on the Innovative Technological Method to be used and the results of the risk assessment on such Method, including the level of assurance it provides and the controls and safeguards the method involves. What we do not agree with is that such risk mitigation measures must include the setting of a 'limit' depending on the level of assets to be deposited and size of transactions involved.

Question 5: Do you agree with CySEC's intention to require the submission of a standardized attestation duly signed by all Responsible Persons, confirming that the introduction of the Innovative Method(s) in question was (were) deemed duly justified on a reasonable, consistent

and demonstrable basis, for the customers intended to be used and for the level of assets to be deposited or the size of transactions involved, prior the use of such innovative method?

We do understand that CySEC would wish to be informed of the introduction of the Innovative Method(s) and we agree that CySEC should be informed/notified on the introduction of such Innovative Method(s). However, we do not agree that this should be in the form of the proposed Attestation. More specifically:

- (a) we do not agree with point 2 of table 2.2. regarding the setting of limits which as explained above, at least for the ASP sector, would not be a meaningful or appropriate risk mitigation measure.
- (b) we do not agree that it should be required for an attestation to be provided by all Responsible Persons, confirming that the Innovative Method(s) in question was (were) deemed duly justified on a reasonable, consistent and demonstrable bases, for the customers intended to be used.

We believe that such strict attestation would act as a refrain for regulated entities to introduce and use Innovative Method(s). It is our view that should such attestation be required firms would find it strict and excessive and because of the need for such attestation would not even consider the introduction of such Innovative Method(s). Our position is that a simplified form of a 'Notification' would be sufficient rather than an 'Attestation' in the form presented requiring signature by all Responsible Persons specified therein. The notification to CySEC could include details of the Innovative Method(s) to be introduced and perhaps a simple confirmation as to the execution of the Risk assessment for the introduction of the Innovative Method(s) and /or an annual affirmation for the reassessment of the risk.

Question 6: Do you agree with the additional considerations and Practical Guidance?

We do not have any comments.

Question 7: Do you have any suggestions for specific additional safeguards that should be set in the form of practical Guidance or otherwise?

We do not have any further suggestions.

Question 8: Do you have any other comments? Please clarify how the suitability of the staff employed can be established.