

M E M O R A N D U M



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Comments regarding EBA's Opinion on access of asylum seekers to basic financial services and bank accounts

On 12 April 2016, the European Banking Authority (EBA) published its *Opinion of the European Banking Authority on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories*.¹ Finansinspektionen provides its response to the opinion below.

Finansinspektionen (FI) welcomes the EBA's Opinion and agrees with its assessment of the EU legal conditions for banks and other financial actors to provide asylum seekers with access to bank accounts and other basic financial services. For people who have come to Sweden, gaining access to a bank account and simple payment services is an important step for being able to enter the labour market and become integrated into Swedish society. The absence of banking services for some groups in society could also lead to the creation of alternative payment solutions outside of the financial system. This would make it difficult or impossible to detect suspicious transactions, which is a key part of anti-money laundering and countering financing of terrorism.

In situations where an asylum seeker cannot provide traditional forms of identification, banks have been unsure about what other measures they should be taking to ensure satisfactory initial customer due diligence. The EBA's Opinion states that it is possible for the banks to take effective and adequate measures to manage the money laundering and terrorism financing risks that arise from allowing asylum seekers without traditional forms of identification to gain access to basic financial services and products. The EBA finds that the EU law is sufficiently flexible to allow reasonable and proportionate risk management in this respect. It should therefore be relatively uncommon for banks to need to deny an asylum seeker a bank account solely on account of the risk of money laundering or terrorism financing. In most cases, banks can

¹ <https://www.eba.europa.eu/-/eba-publishes-opinion-on-the-application-of-customer-due-diligence-measures-to-customers-who-are-asylum-seekers-from-higher-risk-third-countries-or-te>

more effectively mitigating this risk by limiting its selection of services and products and conducting more thorough checks and monitoring of, for example, transactions and business relationships.

FI makes the assessment that the EBA's Opinion is in line with the current Swedish regulations. Transposed to Swedish conditions, the EBA's Opinion means that banks and other financial actors can accept identification in the form of Migrationverket's LMA card (which serves as proof that a person has sought asylum) and other controls in cases where the asylum seeker falls under the exemption from the requirement of a work permit (AT-UND). Examples of "other controls" could be that the bank calls Migrationsverket, the asylum seeker provides a certified copy of his/her foreign identify documentation or a close relative with an approved Swedish ID affirms the identity. Verification of the information on the LMA card should be based on the risk of terrorism financing and money laundering that each bank must identify for its operations.

The European supervisory authorities' proposed joint guidelines for simplified and enhanced customer due diligence (JC/2015/061²) present the risk factors that financial institutions should consider when assessing the risk of money laundering and terrorism financing in individual business relationships and occasional transactions. A customer's ties to a high-risk country constitute just one of several factors that banks should consider when assessing this risk, and according to the guidelines should not be the only factor that determines the risk category to which the bank assigns the customer. It is FI's opinion that banks should be able to make well-informed decisions about when enhanced measures are appropriate after assessing the risk for each individual customer using these risk factors.

The EBA expresses in its Opinion that, due to the combination of the geographical risk and the uncertainty surrounding the asylum seeker's identity, it is probably not possible to classify the risk as low, but this risk could be effectively mitigated through other measures. FI emphasises that the guidelines only specify some examples of how the financial institutions should apply enhanced customer due diligence measures and do not present an exhaustive list. There are different ways for the banks to take enhanced measures, and the EBA's Opinion states that the most important measures to mitigate the risk of money laundering and terrorism financing are ongoing monitoring of both transactions and business relationships. Other measures, such as the asylum seeker only gaining access to certain services and products, also enable the banks to effectively mitigate the risk. According to the EBA, there is very little support for the banks to completely deny a business relationship to an asylum seeker solely on the basis of the person coming from a specific geographical area or due to a strict application of the examples in the above-mentioned guideline for simplified and enhanced customer due diligence. The EBA makes

²http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+%28Joint+Draft+Guidelines+on+AML_CFT+RFWG+Art+17+and+18%29.pdf

the assessment that such bases are neither in line with the risk-based money laundering regulations nor the Payment Account Directive³.

FI shares the EBA's assessment and also makes its own assessment that such procedures could be in violation of the obligation to contract that is set out in the Deposit Insurance Act (1995:1571).

The EBA's Opinion states that a bank should be able to demonstrate to its supervisory authority that its measures for asylum seekers are adequate by:

- specifically treating this category of customers in the firm's risk assessment,
- clearly stating in internal procedures and processes which controls staff must carry out at the customer level, and
- clearly documenting all decisions to refuse a business relationship or apply risk-mitigating measures.

³ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.