

SCConFin 2021 21

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EBA Staff

EBA Regular Use

Discussion note

on the EBA work on de-risking

Background

1. As SCConFin members may recall, EBA staff presented at the meeting of the SCConFin on 2 February 2021 a progress update on the EBA's ongoing work on de-risking, following the Call for Input¹ the EBA had launched in June 2020.

Selected issues reported in response to the EBA's call for input

2. *Outside* the financial sector and apart from trade and businesses, the EBA received input from individuals, associations, political parties and a national Ombudsman that report difficulties, for natural persons, to access or maintain bank accounts. These include in particular those respondents who claim to be 'accidental Americans', i.e., citizens or residents of a foreign country other than the U.S. who may be considered an American citizen under the U.S. nationality law. For the latter, the US Foreign Account Tax Compliance for Overseas Residents – FACTA is applicable and it includes international tax and offshore reporting and foresees substantial penalties for financial institutions that fail to comply with these reporting obligations.
3. In terms of type of financial services being denied to the above-mentioned natural persons, most respondents indicated that they could not open a bank account and that de-risking decisions affected them at the onboarding stage. Several reported that such decisions affected them in the course of an existing business relationship (i.e., 'offboarding'). Not all respondents specified the types of accounts they were refused access to, but several mentioned basic payment account and saving accounts.
4. Other financial products for which access appears to have been denied included credit cards, overdraft facility, loans, mortgage and/or restrictions in accessing some investment products and life insurances. Several respondents furthermore indicated higher rates and increasing

¹ Link: [EBA calls for input to understand impact of de-risking on financial institutions and customers](https://www.eba.europa.eu/en/consultations/2020/06/01/call-for-input-to-understand-impact-of-de-risking-on-financial-institutions-and-customers) | European Banking Authority (europa.eu)

fees had been imposed on them. The EBA does not have sufficient evidence at this stage to substantiate these claims, as refusal to provide access to certain services could also result from wider credit and reputational risk management or genuine ML/TF concerns.

5. Across these very diverse categories of respondents, the EBA notes the following issues that arise from de-risking decisions :

- Absence of reasoned decisions: many respondents that indicate that they have been de-risked suggest that in most cases, credit institutions do not provide transparent explanations as to why decisions are taken to refuse onboarding, to offboard, or to apply some restrictions on accounts. Many respondents for instance report that the only justification provided referred to the own institutions' policies, without any further details. Many respondents claim that, as a result, they are the victims of wholesale de-risking of certain categories of customers, which are associated with high ML/TF risks. It is, however, important to highlight that credit institutions may be unable to provide detailed explanations in cases of genuine ML/TF concerns, as these could amount to a 'tipping off' offence.
- Insufficient time to identify alternative service provisions: when the decision results in the termination of an existing business relationship (i.e., 'off-boarding'), respondents report that the decision is often communicated with short notice, which can be as short as one month. Respondents affected indicate that this can impact their livelihoods.
- Lack of opportunity for review/appeal: respondents suggested that decisions made by banks were often irrevocable, and that they had not been made aware of opportunities to appeal or request a review of their case. Where an appeal process was used, it was described as opaque.
- Lack of alternatives: respondents indicate that very few alternatives to access financial services were available once they were de-risked, though it was not always clear from the responses why this was the case and which alternatives had been explored. Some respondents indicate that they had to store their savings in cash at home. Options put forward by respondents include the use of PSPs and the use of 'newer banks' (presumably online-only or mobile-only, i.e., 'neo banks', or EMIs. Respondents report that these alternatives often come at a much higher price. Alternatives also included the opening of accounts in another jurisdiction either in the EU or abroad.