European Banking Authority

Mrs Carolin Gardner

One Canada Square (Floor 46)

Canary Wharf

London E14 5AA

UK

Luxembourg, XX January 2015

**Re: Response to European Supervisory Authorities Consultation on Joint Guidelines under Article 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions**

Dear Mrs Gardner,

PayPal (Europe) S.à r.l. et Cie S.C.A. (hereafter “PayPal Europe”) welcomes the opportunity to respond to the consultation on the draft Guidelines on SDD and EDD and related risk factors (hereafter “Draft Guidelines”). We are grateful for your willingness to receive and take our concerns into account.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

Victoria Reanney

Chief Compliance Officer

1. **Do you consider that these guidelines are conducive to firms adopting risk-based, proportionate and effective AML/CFT policies and procedures in line with the requirements set out in Directive (EU) 2015/849?**

We have found these guidelines helpful, informed and focused on key areas of risk. We do however have a number of comments and have set these out below.

**Risk factors (Title II, point 17.) –** PayPal Europe supports the holistic approach and agrees that the presence of isolated risk factors does not necessarily move a relationship into a higher or lower risk category.

**Customer risk factors (Title II, point 20. fourth bullet point) –** PayPal Europe supports the risk factor but the end of the sentence (“or anyone associated with them may have handled the proceeds from crime”) is too vague and would be very difficult for the firms to monitor. We suggest ESA’s to stick to the wording already in use i.e. “family members and persons known to be close associates”.

**Weighting risk factors (Title II, point 34. fourth bullet point) –** PayPal Europe supports the weighting risk factors approach as it allows firms to enhance risks assessment methodology. However, we understand that the fourth bullet point does not allow firms to consider mitigation controls that would reduce the residual risk. We suggest ESA’s removing this bullet point.

1. **Do you consider that these guidelines are conducive to competent authorities effectively monitoring firms’ compliance with applicable AML/CFT requirements in relation to individual risk assessments and the application of both simplified and enhanced customer due diligence measures?**

Yes, subject to our comments on both general guidelines and sector specific guidelines.

1. **The guidelines in Title III of this consultation paper are organised by types of business. Respondents to this consultation paper are invited to express their views on whether such an approach gives sufficient clarity on the scope of application of the AMLD to the various entities subject to its requirements or whether it would be preferable to follow a legally-driven classification of the various sectors; for example, for the asset management sector, this would mean referring to entities covered by Directive 2009/65/EC and Directive 2011/61/EU and for the individual portfolio management or investment advice activities, or entities providing other investment services or activities, to entities covered by Directive 2014/65/EU.**

PayPal Europe supports the structure of the guidelines but has several comments on the Sectoral guidelines for electronic money issuers.

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| Provision | Comments |
| **Point 114, third bullet point, iv**  “[…] can be used in cross-border transactions or in different jurisdictions;” | We do not agree with the statement that cross-border transactions necessarily imply a higher AML risk. We suggest adding “that presents a higher AML risk”. |
| **Point 115, second bullet point, i**  “[…] requires that the funds for purchase or reloading are drawn from an account held in the customer´s name at an EEA credit or financial institution;” | Establishing the name in which an external account is held is in most cases impossible because the banks or other institutions providing such accounts do not in general provide a means for ascertaining the name on the account from which funds are drawn into a PayPal account. In some cases, a bank or institution may be impeded from providing customer information by data protection or banking confidentiality laws, and few banks have facilities enabling their customers to give consent or mandates online or in efficient ways in order to overcome data protection or confidentiality barriers. PayPal would welcome support from ESAs in improving the information sharing between institutions without compromising privacy rights.  However, although obtaining a name is usually impossible, it is however possible to establish who has access to an account. Although PayPal would welcome an ability to obtain more definitive identifying information for external account holders, allowing for the establishing of control over the account would enable an equivalent or greater degree of certainty to be established. We suggest adding “or one over which the customer can be shown to have control”. |
| **Point 115, third bullet point, ii**  “[…] can only be used domestically;” | We disagree that cross-border transactions automatically entail higher AML risk. E-wallet providers such as PayPal Europe allow secure and convenient internet and mobile payments while ensuring a high quality transaction monitoring, both for domestic and cross-border transactions.  We recommend deleting this reference, as it could create an unnecessary obstacle to the completion of the Digital Single Market. |
| **Point 118, first bullet point**  “[…] online and non-face to face distribution without adequate safeguards” | The term “adequate safeguards” is unclear. We expect ESAs to provide more clarification on the meaning of this term. |
| **Point 124, first bullet point**  “[…] postponing the verification of the customer´s or beneficial owner´s identity to a certain later date after the establishment of the relationship or to when a certain (low) monetary threshold is exceeded (whichever occurs first). The monetary threshold should not exceed EUR 250 where the product is not reloadable, can be used in other jurisdictions or for cross-border transactions or EUR 500 where it is permitted by national law. In this case, the product can only be used domestically.” | We support this example of SDD measures that could be applied in low risk situations.  However, we recommend that the guidelines allow more flexibility to payment providers to modulate their customer due diligence to ensure it is proportionate to the actual money laundering and terrorist financing risk.  Digital payment providers such as PayPal Europe have strong transaction monitoring programmes that gather enough information on their users’ patterns of behavior to enable them to spot a suspicious transaction very quickly.  Over-cumbersome AML rules might perhaps discourage some illicit activities, but will for sure stifle digital payments development and innovation. A balanced approach is therefore needed.  We suggest ESAs remove the words stricken here “~~The monetary threshold should not exceed EUR 250 where the product is not reloadable, can be used in other jurisdictions or for cross-border transactions or EUR 500 where it is permitted by national law. In this case, the product can only be used domestically.~~” |
| **Point 124, second bullet point**  “[…] verifying the customer´s identity on the basis of a payment drawn on an account in the sole or joint name of the customer with a EEA-regulated credit institution” | Establishing the name in which an external account is held is in most cases impossible. Please refer to the note above on point 115, second bullet point, i |