Guidance Note:

The Use of Cash and the Banking Sector

Issued: July 2022

The present Guidance Note is intended to provide credit institutions with directions as to how they can comply with their obligations under the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) and the relevant Implementing Procedures with respect to cash deposits and withdrawals. This Guidance Note also takes into account the Use of Cash (Restriction) Regulations (CRR). While addressed to the Banking Sector, any subject person carrying out activities involving cash deposits and/or withdrawals is to equally consider the directions, examples and red flags provided herein when implementing its obligations at law.

INTRODUCTION

Cash is particularly susceptible to misuse for money laundering and funding of terrorism (ML/FT) purposes. The European Union's Supranational Risk Assessment has repeatedly considered different scenarios involving use of cash to facilitate ML/FT and the resulting ML/FT risks. Cash belongs to the person holding it and therefore it is quite difficult to determine its source or who is intended as the ultimate recipient, making it an ideal means for criminals to take advantage of.

Cash is particularly prevalent as a payment means in Malta and, as Malta's own National Risk Assessment clearly sets out, cash presents a significant vulnerability for the country, especially within the immovable property and luxury goods sectors. Even Malta's MONEYVAL 2019 Mutual Evaluation Report highlighted the use of cash as one of the more significant risks the country is exposed to and called upon authorities to take measures to address and mitigate such risks.

One of the measures taken at national level to address the ML/FT risks associated with the use of cash has been the implementation of the CRR[1] which came into force on 9 March 2021.

[1] Legal Notice 81 of 2021.

These regulations have introduced a limit on payments in cash when purchasing or selling specific items or products. The regulations set down that making or receiving a payment in cash equal to or in excess of Euro ten thousand (€10,000) for any one or more of the items or products listed[2] in the CRR, constitutes a criminal offence.

Credit institutions have always been exposed to the risks presented by cash, since they are a main entry point through which cash can be introduced into the financial system and subsequently transferred to third parties. The purpose of this Guidance Note is to provide general directions on how the Banking Sector can mitigate the risks of ML/FT associated with cash, taking also into account the CRR.

[2] The items and products referred to by the Regulations are antiques, immovable property, jewellery, precious metals, precious stones and pearls, motor-vehicles, sea-craft and works of art.

1. ACCEPTING CASH DEPOSITS

One of the main obligations that credit institutions must comply with as subject persons is the collection of sufficient data and information at customer on-boarding stage, to develop a business and risk profile for their customers. Any information collected at this point is crucial as it allows for more effective on-going monitoring of the business relationship and the customer activity through the accounts held with the institution. With regards to a customer's use of cash, a credit institution may already at this stage obtain an indication as to whether it can expect:

a. The customer's banking activity to involve the use of cash in terms of deposits/withdrawals
b. What may be the approximate value, frequency, and number of these deposits/withdrawals
c. Through which channels any such deposits/withdrawals are likely to be made

As referred to above, this information is intended by way of an indication and to allow the institution concerned to know what to expect – any information and figures provided should not be considered as hard and fast thresholds, with institutions eventually having to also factor in a margin of tolerance when setting up their monitoring systems and procedures.

Credit institutions should leverage any in-house information, expertise, or know-how they have with respect to the indicated economic activity to ascertain how realistic the amounts indicated by the customer are. Credit institutions will often already be servicing similar businesses. A comparative exercise can easily reveal how realistic the information provided by the customer is and whether additional questions need to be asked to better understand the business activity of the customer. Moreover, when a credit institution is to extend credit facilities, its lending officers may again have specific insights into how similar businesses operate and what can be expected in terms of turnover, at times even depending on the location of the customer, the time/period of the year, the specific market it caters for, etc. The same can be said with respect to the banking activity of customers falling within determinate age-brackets. Major discrepancies should lead to additional clarifications being requested from the customer, both at on-boarding stage and when carrying out on-going monitoring.

A solid customer business and risk profile should allow a credit institution to carry out appropriate on-going monitoring, including with respect to a customer's transactions to detect any unusual transaction/activity carried out by the customer. In this regard**, it is important that the institution is able to have a holistic overview of the customer's transactions and, in this case, of any cash deposits made.** Thus, the institution's systems should capture any cash deposit effected by the given customer through all the different channels available to them. It should make no difference whether a deposit is carried out physically through one of the institution's branches or other deposit-taking outlets, through an ATM, a night safe or any other means. It's only in this manner that a proper comparison between the expected and the actual account activity can be carried out.

As for what can be done to ensure that there is a reasonable explanation for the customer's value and volume of transactions, the credit institution could for example obtain on a risk-sensitive basis copies of the customer's management accounts or sales ledger and compare the deposits made with the entries in the documents. One would expect that any cash deposits would be less than any figures for reported sales.

The information available to the credit institution should allow it to identify not only when customers are trying to or have made significant cash deposits but also **unusual deposit patterns**. The latter may be especially relevant when single deposits may not be particularly high in value, but they are carried out on a regular basis or otherwise in quick succession through different channels or locations. An institution would be expected to check whether single or multiple deposits actually tally with the customer's profile and, where this is not the case, either question the customer to see if there is a reasonable explanation for the departure from expected or known transactional history or, if the institution already has sufficient information at hand to indicate that the deposits on their own already give rise to a suspicion of ML/FT, file a Suspicious Transaction Report (STR) with the FIAU.

Apart from the value or pattern of transactions, institutions should consider whether there is anything else amiss with the deposits being made. Retail operations would usually lead to the customer being in possession of cash in different denominations. Thus, it would be quite unusual if the deposit were to consist predominantly or exclusively of large denomination notes. This constitutes a red flag that should lead to further querying and, depending on the customer's reaction and/or the information provided, consideration as to whether there are grounds for the submission of an STR by the institution concerned.

2. CASH WITHDRAWALS

Transaction monitoring will inevitably also find application with respect to cash withdrawals. However, there are two main factors that one needs to bear in mind when it comes to cash withdrawals:

a. **The funds would have been deposited with the credit institution from which they are to be withdrawn.** Whether the balance on the account was accumulated through cash deposits or through transfers from other institutions makes no difference, as the credit institution should be aware of how the funds were derived and accumulated. Any question or doubt as to the legitimacy of the funds should have been cleared when the funds were placed on one's account, be it through a deposit or an incoming transfer, and before the customer requests a withdrawal. There may still be instances where a cash withdrawal needs to be questioned but these instances should be the exception rather than the rule and only when there are actual ML/FT risks.

b. **The need to consider all the information available to credit institutions and to apply a risk-based approach remains a major consideration.** Reference is not being made solely to any information on withdrawals that may have been collected at customer on-boarding stage but also to the personal circumstances of the given customer. Customers that are less likely to use internet and mobile banking facilities to manage their finances and/or to carry out transactions will rely more on cash to cater for all their expenses, independently of how big or small they may be. Similarly, customers that are known to have acquired immovable property which they are renovating or building are likely to pay any tradesmen carrying out works on their property in cash (which is **not** in breach of the Cash Restriction Regulations). To the extent that a cash withdrawal can be justified based on what is known about a customer's circumstances, there would be no need to question it.

In this context, it is once more important to stress the need to have a holistic overview of a customer's banking activity to properly appreciate the extent of withdrawals being affected, how the withdrawals are being done and how the withdrawals fit in with the overall banking activity of the customer. This will allow credit institutions to detect whether there are any patterns that are unusual or if specific individual transactions can give rise to suspicion of ML/FT. For example, repeated withdrawals from different locations or through different means within a short period of time but which, when taken together, result in significant amounts being withdrawn would need to be questioned. Deposits followed by immediate withdrawals, be it a single withdrawal or multiple small ones, can be indicative of ML.

Situations may arise where the withdrawals are never made by the customer but rather by a third party who may not even be related. More worryingly, there may be instances where the customer is carrying out the withdrawal but is always accompanied by a third party when calling at the institution's branch to effect the withdrawal. While in both instances there may be reasons why this is taking place, it is also the case that these may be indications that the customer is being exploited by criminal elements.

Thus, when it comes to withdrawals the focus has to be more on how these are taking place rather than on the amounts being withdrawn. That is not to say that there may not still be the need to query the withdrawal of significant amounts where the amount can be considered as presenting a significant risk of ML/FT. Particularly large withdrawals that are not only unusual when considering a customer's normal banking activity but would objectively be considered as such due to the amounts involved should result in the institution asking why these are being made and, based on the information obtained and if considered necessary, also lead to an STR being filed with the FIAU.

E.g.: Customer 'E' holds an account with Bank 'B' and only sporadically makes cash withdrawals. On a given occasion, Customer 'E' withdraws Euro 5,000. This is unusual within the customer's profile as it is not in line with the customer's profile nor with the customer's known transactional activity. However, a EUR 5,000 withdrawal presents at most a low risk of ML/FT. There would therefore be no need for Bank 'B' to question it.

Moreover, the risk of FT remains ever present, independently of the value of the withdrawal itself[3].

[3] Credit institutions are invited to refer to the FIAU's ***Guidance Document on the Funding of Terrorism*** - https://fiaumalta.org/wp-content/uploads/2020/11/20201127_FIAU-Guidance-Document-The-Funding-on-Terrorism.pdf - which provides a series of red flags that can indicate that the use of cash is associated with FT.

3. THE USE OF CASH (RESTRICTION) REGULATIONS

Regulation 3(1) of CRR prohibits the making or receipt of a payment or the carrying out of transactions in cash where the payment or transaction amounts to, or exceeds, ten thousand euro (€10,000) or its equivalent in any other currency, whether in one transaction or in several linked transactions, in respect of the purchase or sale of given items or products.

The restriction introduced through the CRR is of special interest to credit institutions within the context of their on-going monitoring obligations, especially if the customer's business is known to consist in the selling of one or more of the items referred to in these regulations. **Significant cash deposits should not automatically result in STRs unless the credit institution has a suspicion that the cash constitutes proceeds of crime.** It is important to bear in mind that a single cash deposit may represent multiple sales, which individually would not fall foul of the CRR. In addition, traders selling one or more of the goods listed in the CRR offer a wide range of these goods, the prices of which may vary considerably from one item to the next. Furthermore, consideration is to be given to those traders who trade in multiple items, some of which may fall under the scope of the CRR and others which do not. Credit institutions should make use of any insights they may have into the customer's activities to identify those deposits it should query. Any explanation provided should be equally considered in the light of what is known about the customer and based on the information and, if necessary, documentation provided by the customer. The guidance already provided under Section 1 hereabove as to the actions to take to see if customer activity involving cash deposit tallies with its actual business activity would be equally applicable in this context.

L.N. 81 of 2021

PREVENTION OF MONEY LAUNDERING ACT
(CAP. 373)

Use of Cash (Restriction) Regulations, 2021

IN EXERCISE of the powers conferred by article 12 of the Prevention of Money Laundering Act, the Minister for Finance, acting on the advice of the Financial Intelligence Analysis Unit, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Use of Cash (Restriction) Regulations, 2021.

(2) The objective of these regulations is to introduce a restriction on the use of cash for certain payments and transactions with a view to combating money laundering and other criminal activity.

Interpretation and application.

Cap. 373.
S.L. 373.01

2. (1) All words and phrases not defined within these regulations shall have the same meaning as prescribed in the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations.

(2) In these regulations, unless the context otherwise requires:

"the Act" means the Prevention of Money Laundering Act;

"antique" means a work of art or an object of a geological, paleontological, archaeological, or antiquarian importance and which is at least one hundred years old;

"cash" means legal tender currency notes and coins;

"immovable property" means and includes all things, rights and actions which are immovable by their nature or by reason of the object to which they refer in accordance with articles 308 and 310 of the Civil Code;

Cap. 16.

"jewellery" means personal ornaments made in whole or in part, or covered with gold, silver, platinum or other precious metals and, or, set with diamonds, precious stones or pearls, and wrist watches;

"linked transaction" means two or more transactions which are performed by the same parties, having the same or similar linked purpose or purposes, and which are carried out within a period of six

On the other hand, if a customer, whether conducting a commercial activity or otherwise, discloses that the cash deposited resulted from a transaction consisting in the sale and/or purchase of any of the items referred to in the regulations, the credit institution would have no option but to file an STR. This should only take place if the cash deposited amounts to or exceeds €10,000.

Should the €10,000 restriction be adopted by credit institutions to set a limit on cash deposits? Neither the CRR nor the FIAU are calling for the implementation of any such restriction. **Having said that, the €10,000 threshold may however be a good indicator when providing services to non-trading customers that a given transaction or series of transactions needs to be flagged for additional querying by the credit institution, as it is unlikely that this would be considered as a normal transaction or pattern of transactions for customers of this kind.** This is not to say that a credit institution is not to adopt higher or lower thresholds should it consider this to be a better trigger to flag cash deposits that should be queried. On the other hand, for customers whose economic activity consists in the buying and selling of any of the goods listed in the regulations, a €10,000 threshold may prove to be too low due to any of the reasons referred to in the preceding paragraph. Thus, it may prove to be more worthwhile and more in keeping with the risk-based approach to set a higher threshold. In either case, any decision on the setting of thresholds should be based on what is known about the customer's activity.

A bigger conundrum is whether credit institutions should question every cash withdrawal effected or requested by customers equivalent to, or exceeding, €10,000. The introduction of the CRR does not alter what has already been stated earlier in Section 2, with respect to the monitoring of withdrawals and the need to adopt a risk-based approach to any queries. **Setting a threshold may assist with conducting on-going monitoring but one needs to bear in mind that this may be circumvented by breaking down the withdrawal into multiple smaller ones. It would therefore be necessary to also provide for a reasonable time frame over which a customer may not exceed any desired or set threshold.**

Having said that, should any credit institution query any withdrawal and obtain information that the funds are to be used in breach of the CRR, the credit institution should consider whether it has sufficient reason to submit an STR in terms of Regulation 15(3) of the PMLFTR.

4. REPORTING OF SUSPICIOUS DEPOSITS/WITHDRAWALS

Questions may arise as to how best to proceed when faced with a cash deposit/withdrawal that gives rise to a suspicion of ML/FT, i.e., should the credit institution process it and then file an STR as per Regulation 15(5) or should it somehow delay executing the customer's transactions (or even refuse to carry it out) pending the filing of the STR to see if the FIAU is opposed to it? In these circumstances, there are several factors that need to be considered:

a. **The way deposits and withdrawals are made is a determining factor in establishing how to proceed.** Given that nowadays there are ATMs that allow for cash to be placed on one's account instantaneously, as well as the difficulties that staff members may encounter when interacting with customers face-to-face, it can be somewhat difficult to delay or refuse a deposit or withdrawal without somehow alarming the customer. In these instances, it may be more viable to proceed with processing the customer's instructions and then file an STR. In the case of deposits, this has the added advantage that it may make the attachment of the funds possible should there be sufficient grounds for an eventual attachment order to be issued.

b. **Customers wishing to withdraw significant amounts may be requested to provide prior notice to the institution. This would provide the institution with sufficient time to file an STR if there is suspicion of ML/FT and for the FIAU to indicate whether it has any objection to the credit institution proceeding with the requested withdrawal.** However, even in these instances institutions are to bear in mind what has been already stated earlier, with respect to withdrawals and are to query any such withdrawal if the institution does not have sufficient information to understand the purpose behind it.

ANNEX I – CASH-RELATED RED FLAGS

1.1 CASH DEPOSITS

- Customer makes significant cash deposits without justification.
- Customer makes multiple deposits which individually are not of a particularly high value but which are carried out on a regular basis or otherwise in quick succession through different channels or locations.
- Deposits made consist predominantly or exclusively of large denomination notes which is not in keeping with the known activity of the customer.
- Deposits followed by immediate withdrawals, be it a single withdrawal or multiple small ones, can be indicative of ML.

1.2 CASH WITHDRAWALS

- Repeated withdrawals from different locations or through different means within a short period of time but which, when taken together, result in significant amounts being withdrawn, would need to be queried.
- Particularly large withdrawals that are not only unusual when considering the customer's normal banking activity, but which would objectively be considered as unusual due to the amounts involved should result in the institution asking why these are being made and, where necessary, also lead to an STR being filed with the FIAU.
- Withdrawals are never made by the customer but rather by a third party who may not even be related to the customer should be queried.
- When the withdrawals are made by the customer, but they are always accompanied by a third party when calling at the institution's branch to make the withdrawal should also be queried.