



EBA/CP/2022/13

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06.12.2022

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## Consultation Paper

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- Guidelines amending Guidelines EBA/2021/02 on 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 ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849
  
- Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services under Directive (EU) 2015/849



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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 6.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 06.02.2023. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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De-risking refers to decisions made by credit and financial institutions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher money laundering and terrorist financing (ML/TF) risk. In January 2022, the EBA published an Opinion on the scale and impact of de-risking in the EU.<sup>1</sup> This Opinion identified the main drivers of de-risking and the negative impact unwarranted de-risking can have on customers, financial services and the fight against financial crime. It also highlighted the steps competent authorities and co-legislators should take to address unwarranted de-risking and mitigate its negative impact.

The European Commission welcomed the EBA's Opinion and asked the EBA to issue guidelines on the steps institutions should take to facilitate access to financial services by those categories of customers that the EBA's analysis had highlighted as particularly vulnerable to unwarranted de-risking, including refugees and Not-for-Profit organisations (NPOs).

The EBA is now consulting on amendments to its Guidelines on ML/TF risk factors (EBA/GL/2021/02), which will include an annex that sets out factors credit and financial institutions should consider when assessing the ML/TF risks associated with a business relationship with customers that are NPOs.

The EBA is also consulting on a new set of guidelines: the *Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services*. This new set of guidelines specifies further policies, procedures and controls credit and financial institutions should have in place to mitigate and effectively manage ML/TF risks in accordance with Article 8(3) of Directive (EU) 2015/849, including in situations where provisions in Article 16 of Directive (EU) 2014/92 apply, which introduces the right of individuals to open and maintain a payment account with basic features.

Through these new guidelines, the EBA fosters a common understanding by institutions and AML/CFT supervisors of effective ML/TF risk management practices in situations where access by customers to financial products and services should be ensured.

### Next steps

The draft guidelines are published for a two-months public consultation. The EBA will finalise these guidelines once the consultation responses have been assessed.

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<sup>1</sup> EBA/Op/2022/01



## 3. Background and rationale

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### 3.1. Background

1. In January 2022, the EBA published an Opinion on de-risking.<sup>2</sup> It assessed the scale of de-risking in the EU, and the impact of credit and financial institutions' decisions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher money laundering and terrorist financing (ML/TF) risk. The EBA found that across the EU, de-risking affected a variety of customers or potential customers of institutions. The EBA made clear that de-risking of entire categories of customers, without due consideration of individual customers' risk profiles, may be unwarranted and a sign of ineffective ML/TF risk management.
2. The publication of the EBA Opinion on de-risking led the European Commission to ask the EBA to issue new guidelines on the steps institutions should take to facilitate access to financial services by those categories of customers that the EBA's analysis had highlighted as particularly vulnerable to unwarranted de-risking, including refugees and Not-for-Profit organisations (NPOs).<sup>3</sup> This coincided with the outbreak of the war in Ukraine, which further demonstrated the adverse impact of de-risking on vulnerable customers and human relief efforts.
3. To respond to the Commission's request, the EBA prepared guidelines that foster a common understanding by institutions and AML/CFT supervisory authorities of effective ML/TF risk management practices in situations where access by customers to financial products and services is at risk. This new set of guidelines specifies further policies, procedures and controls credit and financial institutions should have in place to mitigate and effectively manage ML/TF risks in accordance with Article 8(3) of Directive (EU) 2015/849, including in situations where provisions in Article 16 of Directive (EU) 2014/92 (the Payment Account Directive – PAD) apply.

### 3.2. Rationale

4. Following the Commission's request, the EBA performed a gap analysis to establish how best to respond to the Commission's request. The risk factors guidelines already provide several clarifications that support credit and financial institutions to manage ML/TF risks associated with individual business relationships in an effective manner, including in situations where the ML/TF risks are increased. That happens, for instance, when customers have links with a high-risk jurisdiction or when they are Politically Exposed Persons (PEPs). In addition, in 2016, in the context of the war in Syria, the EBA issued an Opinion to tackle the unwarranted de-risking of refugees (EBA-Op-2016-07).

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<sup>2</sup> [EBA/Op/2022/01](#)

<sup>3</sup> [ARES\(2022\)1932799](#)



5. As a result of this gap analysis and drawing on the findings from its Opinion on de-risking, the EBA concluded that a number of aspects would benefit from further regulatory clarifications. These aspects include the interplay between the AMLD and the PAD, where the current applicable framework lacks detail on the types of situations in which an account with basic features should be rejected or closed. They also include guidance on customers who are NPOs, who are not covered by the rights provided by the PAD.
6. To build on existing guidelines where possible, the EBA is proposing a two-tiered approach that consists of:
  - Adding an annex to the ML/TF risk factors guidelines, focusing on customers that are NPOs;
  - Issuing a new set of guidelines: the *Guidelines on policies and controls for the effective ML/TF risk management when providing access to financial services*.
7. The draft guidelines are published for a two-months public consultation. The length of the consultation process is justified because the outbreak of the war in Ukraine further demonstrated the adverse impact of de-risking on vulnerable customers such as refugees and human relief efforts, as already highlighted in the EBA's Opinion on de-risking. Urgent action is thus required to ensure access to financial services is maintained for vulnerable customers and for organisations supporting populations in needs in the EU and around the world.

#### Amending the ML/TF risk factors guidelines: setting expectations for customers that are NPOs

8. The EBA is aware of reports that NPOs have faced difficulties in accessing financial services. These difficulties can lead to delays in program delivery, and in some cases, the wind-down of programmes of NPOs. The EBA found in its Opinion on de-risking that the main drivers of credit and financial institutions' decisions to de-risk NPOs or to restrict some of the services provided to them appeared to be related to institutions' reluctance to service customers with links to jurisdictions that are associated with higher ML/TF risks or risks of breaching sanction regimes. The EBA also noted that institutions' decisions to de-risk NPOs appeared to be related to the perceived complexities of their set up and associated difficulties in obtaining the requisite CDD information.
9. To address these issues, the EBA proposes to add an annex to the risk factors guidelines. This annex will clarify the steps that institutions should undertake to get a good understanding of how an individual NPO is set up and operates, as well as the factors credit and financial institutions should consider when assessing the ML/TF risks associated with a business relationship with customers that are NPOs. By clarifying regulatory expectations, the annex aims at supporting credit and financial institutions in their understanding of the specificities of prospective or existing customers who are NPOs.



## New guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services

10. Access to financial products and services is a prerequisite for participation in modern economic and social life. For the most vulnerable, preventing such access can lead to severe economic outcomes, affect everyday life and in some cases increase the risks of being exploited. At the same time, it is important that financial crime risks are effectively managed. Through these guidelines, the EBA clarifies the interaction between an individual's right to access financial services and institutions' AML/CFT obligations. It also sets out the steps institutions should take when considering whether to refuse or terminate a business relationship with a customer based on ML/TF risk or AML/CFT compliance grounds.
11. The guidelines also make clear that credit and financial institutions should document any decisions to refuse a business relationship or to apply risk-mitigating measures. These decisions must be proportionate and aligned with the principle of non-discrimination as enshrined in Article 15 of the PAD and Article 21 of the EU Charter of Fundamental Rights.
12. The guidelines finally include aspects related to complaint mechanism institutions should have in place to ensure customers can complain if they feel they have been treated unfairly. The Joint Guidelines on complaints-handling for the securities and banking sectors<sup>4</sup> also provide useful information on this aspect.

### Issues not considered as part of this consultation

13. The EBA decided to exclude some aspects highlighted by the Commission from the scope of these guidelines:
  - a. Payment and e-money institutions (PIs and EMIs). The EBA decided to exclude them from the scope of these guidelines because de-risking of PIs and EMIs will be addressed as part of the European Commission's forthcoming review of PSD2, as set out in the EBA's response to the Commission's Call for advice published in June 2022.<sup>5</sup>
  - b. Customers who appear to be excluded from access to financial services because they are subject to the US tax regime (i.e., 'accidental Americans'). 'Accidental Americans' are not within the scope of these guidelines; however, reporting obligations under the *Foreign Account Tax Compliance Act* (FATCA) do not constitute grounds for denying access to financial services. This means that customers who are subject to the US tax regime, if they are EU citizens or if they legally reside in the EU, are entitled to access a payment account with basic features under the PAD.

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<sup>4</sup> JC 2018 35.

<sup>5</sup> [EBA/Op/2022/06](#)



- c. Customers affected by de-risking in the context of the application of Union and national restrictive measures. Compliance with restrictive measures regimes is outside of the scope of these guidelines but will be addressed as part of the mandate given to the EBA in the context of the revision of Regulation (EU) 2015/847 on information accompanying transfers of funds (TFR).





## 4. Draft Guidelines amending Guidelines EBA/2021/02

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## Draft Guidelines amending Guidelines EBA/GL/2021/02

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on 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 (‘The ML/TF Risk Factors Guidelines’) under Articles 17 and 18(4) of Directive (EU) 2015/849

# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>6</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities, as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply, should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are primarily directed at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>6</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).



## Addressees

5. These guidelines are addressed to competent authorities as defined in point (i) Article 4(2) of Regulation (EU) No 1093/2010. These guidelines are also addressed to credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849<sup>7</sup>, which are financial sector operators as defined in Article 4 (1a) of Regulation (EU) No 1093/2010.

## Definitions

6. For the purposes of the amending guidelines, the following definition is added:

### **Not-for-Profit Organisations**

Not-for-Profit Organisations mean a legal person or arrangement or an organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes.<sup>8</sup>

# 3. Implementation

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## Date of application

7. These guidelines apply from 6 months after publication of translation. dd.mm.yyyy

# 4. Guideline on customers that are NPOs

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8. Guideline 2. 7(d) is amended as follows:

~~2.7.(d) Is the customer a non-profit organisation whose activities or leadership been publicly known to be associated with extremism or terrorist sympathies? Or whose transaction behaviour is characterized by bulk transfers of large amounts of funds to jurisdictions associated with higher ML/TF risks and high risk third countries? Where the customer is a not-for-profit organisation (NPO), the firms should apply the criteria set out in the annex.~~

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015, p. 73–117)

<sup>8</sup> This definition is aligned with the one used by the FATF when reference is made to Not-for-Profit Organisations.



## Annex: Customers that are NPOs

9. When assessing the risk profile of a customer or prospective customer who is an NPO for the first time, firms should ensure that they obtain a good understanding of the NPO's governance, how it is funded, its activities, where it operates and who its beneficiaries are. Not all NPOs are exposed in a similar way to ML/TF risk and firms should take risk-sensitive measures to understand:
- a) who controls the customer and who its beneficial owners are. As part of this, firms should identify the NPO's trustees or equivalent, governing body and any other individual who has control or influence over the NPO. For this purpose, firms should refer to information including the legal status of the NPO, a description of the NPO's governance set up and/or a list of the legal representative(s).
  - b) how the NPO is funded (private donation, government funds, etc.). For this purpose, firms should refer to information about the donor base, funding sources and fundraising methods, such as annual reports and financial statements.
  - c) what the objectives of the customer's operations are. For this purpose, firms should refer to information including the customer's mission statement, a list of its programmes and associated budgets, activities and services delivered.
  - d) who the beneficiaries of the customer's activities are. Documentation gathered for this purpose may include mission statements or campaign-related documents.
  - e) what transactions the NPO is likely to request, based on its objectives and activity profile, including payment of staff or providers posted abroad, and the expected frequency, size, and geographical destination of such transactions. For this purpose, firms should refer to information including organigrams, explanation of the organisational structure of the NPO, the detailed list of staff and beneficiaries for each of its activities.
  - f) where the NPO conducts its programmes and/or operations, in particular whether the NPO conducts its activities only at domestic level, or in other jurisdictions associated with higher ML/TF risks and high-risk third countries. For this purpose, firms should refer to information including list of all programmes, activities and services delivered by the NPO, as well as the list of geographic locations served, including headquarters and operational areas. Firms should also assess, for the purposes of Guideline 8, whether the NPO's transactions are likely to involve the execution of payments with a third-country institution.

### Risk factors

10. When identifying the risk associated with customers that are NPOs, firms should consider at least the following risk factors:



### *Governance and exertion of control*

- a) does the NPO have a legal status under national law or the national law of another Member State? Is there any documentation that sets out its modalities of governance and identify the NPO's trustees, members of the governing body or any other individuals who exert control over the NPO?
- b) does the legal structure of the NPO require, for its set up, the demonstration of the management capability of its treasurer or managers?
- c) does the legal structure of the NPO require the annual disclosure of financial statements?

### *Reputation/adverse media findings*

- d) to what extent is it difficult for firms to establish the good repute of the NPO and its managers? Is there a good reason why this may be difficult, for example because the NPO has been established only recently, for instance in the last 12 months?
- e) has the NPO been linked by relevant, reliable and independent sources to extremism, extremist propaganda or terrorist sympathies and activities?
- f) has the NPO been involved in other crimes, including ML/TF related cases, according to relevant, reliable and independent sources?

### *Funding methods*

- g) is the NPO's funding transparent and accountable or difficult to trace? Does it publicly document its funding sources and are these subject to external audits?
- h) do the NPO's funding methods carry ML/TF risks? Does it rely entirely or largely on cash donations, crypto assets or crowdfunding? Or are the NPO's sources of funds channelled through the payments system?
- i) is the NPO funded, partly or largely, by private donors or donors from jurisdictions associated with higher ML/TF risk or high-risk third countries identified as having strategic deficiencies in their AML/CFT regime?

### *Operations in jurisdictions associated with higher ML/TF risks and high-risk third countries*

- j) does the NPO operate or deliver assistance in jurisdictions associated with higher ML/TF (as assessed based on risk factors presented in Title I of these guidelines) or in high-risk third countries (as identified by the Commission pursuant to Article 9(2) of Directive (EU) 2015/849) or in conflict zones?



- k) in such situations, does the NPO rely on third parties or intermediaries to perform its activities and is able to explain the nature of the discharge? In this context, is the NPO able to monitor and have adequate oversight of the discharge by these third parties?
  - l) Is the business relationship with the NPO likely to involve the execution of transactions with a respondent institution located in jurisdictions associated with higher ML/TF risks or in high-risk third countries?
11. Firms should also consider at least the following factors that may contribute to reducing risks:
- a) The roles and responsibilities of the NPO's governing body and its managers are clearly documented.
  - b) The NPO is legally required to annually disclose its financial statements or to issue an annual report that identifies the sources of funds, the main purpose of the NPO's activities and the beneficiaries of its programmes.
  - c) The NPO can demonstrate it is or has been subject to independent review or external audit.
  - d) The NPO has a good public reputation according to relevant, reliable and independent sources.
  - e) The NPO receives fundings from governments, supranational or international organisations, and the source of funds can be therefore clearly established.
  - f) The NPO does not have any links with high-risk third countries, or if it has, it can demonstrate that it has taken appropriate steps to mitigate the ML/TF risks (for instance, with the designation of staff responsible for AML/CFT compliance or the design of procedures to identify the NPO's beneficiaries and assess the ML/TF risks associated therewith).
  - g) The NPO's activities and beneficiaries do not expose it to higher ML/TF risks.
  - h) The NPO only delivers assistance and support to individuals through direct material help such as providing IT equipment or medical devices.
12. In the event the NPO is conducting activities in jurisdictions subject to EU or UN sanctions, firms should establish whether the NPO benefits from any provisions related to humanitarian aid and derogations in EU/UN financial sanctions regimes, such as humanitarian exemptions or derogations. When deciding how to service these customers and in accordance with their own asset freezing obligations, firms should obtain evidence that provide reasonable assurance that the NPO conducts its activities in these jurisdictions in line with the exemptions provided in the regime, or that it benefits from a derogation granted by a relevant competent authority.
13. For initial screening purposes and throughout the business relationship once it is established, firms should take the steps necessary to understand how the NPO operates and conducts its operations. Firms that are likely to have NPO customers, for example because they provide money transfer services or current account services, should consider establishing a dedicated



contact point for this specific category of customers to have a good understanding of the way the sector is set up and operates.





## 5. Draft Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services

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## Draft Guidelines

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on policies and controls for the effective management of ML/TF risks when providing access to financial services



# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>9</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and credit and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>9</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 2. Subject matter, scope and definitions

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### Subject matter and scope of application

5. These guidelines specify further policies, procedures and controls credit and financial institutions should have in place to mitigate and manage effectively ML/TF risks in accordance with Article 8(3) of Directive (EU) 2015/849<sup>10</sup>, including in relation to the provision of a basic payment account in accordance with Article 16 of Directive (EU) 2014/92.<sup>11</sup> Competent authorities should use these guidelines to assess the adequacy and effectiveness of credit and financial institutions' AML/CFT systems and controls in respect of issues within the scope of these guidelines.

### Addressees

6. These guidelines are addressed to competent authorities as defined in Article 4(2) point (i) of Regulation (EU) No 1093/2010. These guidelines are also addressed to credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849, which are financial sector operators as defined in Article 4(1a) of Regulation (EU) No 1093/2010.

### Definitions

7. Unless otherwise specified, terms used and defined in Directive (EU) 2015/849 have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

<b>De-risking</b>	a refusal to enter into, or a decision to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk, or to refuse to carry out higher ML/TF risk transactions.
<b>ML/TF Risk</b>	means the likelihood and impact of ML/TF taking place.
<b>ML/TF risk factors</b>	ML/TF risk factors means variables that, either on their own or in combination, may increase or decrease ML/TF risk.
<b>Risk-based approach</b>	means an approach whereby competent authorities and credit and financial institutions identify, assess and understand the ML/TF risks to

<sup>10</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015, p. 73–117)

<sup>11</sup> 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 (OJ L 257, 28.8.2014, p. 214–246)



which institutions are exposed and take AML/CFT measures that are proportionate to those risks.

**Jurisdictions associated  
with higher ML/TF risk**

means countries that, based on an assessment of the risk factors set out in Title I of these guidelines, present a higher ML/TF risk. This excludes ‘high-risk third countries’ identified as having strategic deficiencies in their AML/CFT regime, which pose a significant threat to the Union’s financial system (Article 9 of Directive (EU) 2015/849).

## 3. Implementation

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### Date of application

8. These guidelines apply from **dd.mm.yyyy.** {insert specific date corresponding to 6 months after publication of all translations}

### General requirements

9. Credit and financial institutions should set up their policies, controls and procedures in a way that enable them to identify relevant risk factors and to assess ML/TF risks associated with a business relationship in line with the EBA ML/TF risk factors guidelines.<sup>12</sup> As part of this, credit and financial institutions should differentiate between the risks associated with a particular category of customers and the risks associated with individual customers that belong to this category.
10. Credit and financial institutions should ensure that the implementation of these policies, procedures and controls should not result in the blanket refusal, or termination, of business relationships with entire categories of customers that they have assessed as presenting higher ML/TF risk. As part of this, institutions should put in place appropriate and risk-sensitive policies and procedures to ensure that their approach to applying customer due diligence (CDD) measures does not result in unduly denying customers’ legitimate access to financial services.
11. Credit and financial institutions should set out in their policies, procedures and controls all options for mitigating higher ML/TF risk that they will consider applying before deciding to reject a customer on ML/TF risk grounds. These options should at least include adjusting the level and intensity of monitoring and where this is permitted under national law, the application

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<sup>12</sup> Guidelines on 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 (‘The ML/TF Risk Factors Guidelines’) under Articles 17 and 18(4) of Directive (EU) 2015/849, EBA/GL/2021/02.



of targeted restrictions to products or services. Institutions' policies and procedures should set out clearly in which situations the application of these mitigating measures may be appropriate.

12. Before taking a decision to reject or to terminate a business relationship, credit and financial institutions should satisfy themselves that they have considered, and rejected, all possible mitigating measures that could reasonably be applied in the particular case, taking into account the ML/TF risk associated with the existing or prospective business relationship.
13. For the purposes of reporting obligations under Article 14(4) of Directive (EU) 2015/849, institutions should set out in their procedures the reasonable grounds on which they would suspect that ML/TF is taking place or is being attempted.
14. Credit and financial institutions should document any decision to refuse or terminate a business relationship and the reason for doing so. Furthermore, they should be prepared to make this documentation available to their competent authority upon request.
15. In relation to the right of access to a payment account with basic features in accordance with Articles 16(2) and 17 of Directive 2014/92/EU, credit institutions obliged to offer such basic accounts should set out in their account opening policies and procedures how they can adjust their customer due diligence requirements to account for the fact that the limited functionalities of a basic payment account go towards mitigating the risk that the customer could abuse these products and services for financial crime purposes.
16. When ensuring non-discriminatory access to the right of a basic payment account under Article 15 of Directive 2014/92/EU, credit institutions should make sure that where digital onboarding solutions are in place, those also comply with the afore mentioned Directive and with these guidelines and that the digital solutions do not produce automated rejections, which would conflict with that Directive and these guidelines.
17. Credit and financial institutions should, over time and as their understanding of the ML/TF risk associated with individual business relationships grows, update the individual risk assessment of the customer, and adjust the extent of monitoring and the type of products and services for which that customer is eligible.

## Adjusting the intensity of monitoring measures

18. Credit and financial institutions should set out in their policies and procedures how they adjust the level and intensity of monitoring in a way that is commensurate to the ML/TF risk associated with the customer, as set out in the EBA risk factors guidelines. To effectively manage ML/TF risk associated with a customer, monitoring should at least include the following steps:



- a. setting expectations of the customer's behavior, such as the likely nature, amount, source and destination of transactions, so as to enable the institution to spot unusual transactions.
  - b. ensuring that the customer's account is reviewed regularly to understand whether changes to the customer's risk profile are justified.
  - c. ensuring that any changes to the previously obtained CDD information that might affect the institution's assessment of the ML/TF risk associated with the individual business relationship, are taken into account.
19. Credit and financial institutions' policies and procedures should contain guidance on handling applications from individuals that may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation. These should set out at least:
- a. The steps to take where the customer is a refugee and cannot provide the credit and financial institution with traditional forms of identification such as passports or ID cards. Institutions' policies and procedures should specify which alternative, independent documentation it can rely upon to meet its CDD obligations, where permitted by national law. These documents should be robust enough, i.e., up to date, issued by an official national or local authority and containing, as a minimum, the applicant's full name and date of birth.
  - b. The steps to take where the customer is vulnerable and cannot provide traditional forms of identification or does not have a fixed address, for example because they are homeless. Institutions' policies and procedures should specify which alternative, independent documentation it can rely upon. This documentation may include expired identity documents and, where permitted under national law, documentation provided by an official authority such as social services or a well-established Not-for-Profit Organisation working on behalf of official authorities (Red Cross or else), which also provides assistance to this customer.
  - c. Similar references may also be applied to individuals who do not hold an EU residence permit but whose expulsion is impossible. In such situations, credit and financial institutions' policies and procedures should have regard to certificates or documentation produced by an official authority or by an organisation acting on its behalf providing support or legal assistance to those individuals, where permitted by national law. Such authorities may include social workers, officers from Ministry of interior or migration services. These documents may be used as a proof that the individual cannot be expelled in accordance with EU law.
  - d. In cases where support for these vulnerable customers is disbursed in the form of prepaid cards and where the conditions related to simplified due diligence are met as set out in Guidelines 4.41, 9.15, 10.18 of the EBA's ML/TF Risk Factors



Guidelines, the indication that credit and financial institutions may postpone the application of initial customer due diligence measures to a later date.

- e. In cases where such customers apply for an access to a payment account and are considered as presenting low ML/TF risks, which alternative forms of ID the institution may accept and the options for postponing the application of full CDD until after the establishment of the business relationship.

## Targeted and proportionate limitation of access to products or services

20. Credit and financial institutions' policies and procedures should, where permitted by national law, include options and criteria on adjusting the features of products or services offered to a given customer on an individual and risk-sensitive basis. These should include the following options:

- a. offer payment accounts with basic features, where a credit institution is obliged to offer such accounts under the national transposition of Directive 2014/92/EU; or
- b. impose targeted restrictions on financial products and services limits such as the amount or the number of person-to-person transfers or the amount of transactions to and from third countries, in particular where these third countries are associated with higher ML/TF risk, where permitted under national law.

21. In relation to ML/TF risks associated with customers who are particularly vulnerable such as refugees and homeless individuals, credit and financial institutions should ensure that their controls and procedures specify that possible limitations of products and service set out in paragraph 20 (b) are applied taking into consideration the personal situation of the individuals, the ML/TF risks associated therewith and their financial basic needs. In those cases, procedures should include the assessment of the following options to potentially mitigate the associated risks:

- a. no provision of credit or overdraft facilities;
- b. monthly turnover limits (unless the rationale for larger or unlimited turnover can be explained and justified);
- c. limits on the amount and/or number of person-to-person transfers (further or larger transfers are possible on a case-by-case basis);
- d. limits on the amount of transactions to and from third countries (while considering the cumulative effect of frequent smaller value transactions within a set period of time), in particular where these third countries are associated with higher ML/TF risk;





- e. limits on the size of deposits and transfers from unidentified third parties, in particular where this is unexpected; and
- f. prohibiting cash withdrawals from third countries.

## Information on complaint mechanisms

22. When communicating their decision to refuse or terminate a business relationship with a customer, credit and financial institutions' policies and procedure should include the requirement to advise the customer of the consumer's right to contact the relevant competent authority or designated alternative dispute resolution body and provide the relevant contact details accordingly. Institutions may also provide the customer with the weblink of the EBA's suggestions on the submission of complaints to national bodies.<sup>13</sup>

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<sup>13</sup> <https://www.eba.europa.eu/consumer-corner/how-to-complain>

## 6. Accompanying documents

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### 6.1. Cost-benefit analysis / Impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’.

This analysis presents the IA of the main policy options included in this Consultation Paper on

- the draft Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services (‘The Draft Guidelines on access to financial services’); and on
- the draft Guidelines amending Guidelines EBA/GL/2021/02 (‘the ML/TF Risk Factors Guidelines’ or ‘RFGLs’) on 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 under Articles 17 and 18(4) of Directive (EU) 2015/849 (‘The Draft Guidelines amending the RFGLs’)<sup>14</sup>.

The IA is high level and qualitative in nature.

#### A. Problem identification and background

In January 2022, the EBA published an Opinion on de-risking where it assessed the scale and impact of de-risking in the EU<sup>15</sup>. De-risking in this context refers to decisions by credit and financial institutions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher money laundering and terrorist financing (ML/TF) risk. The EBA found that across the EU, de-risking affected a variety of customers or potential customers of institutions. The EBA made clear that de-risking of entire categories of customers, without due consideration of individual customers’ risk profiles, may be unwarranted and a sign of ineffective ML/TF risk management.

This Opinion led the European Commission, by a letter of March 2022,<sup>16</sup> to ask to the EBA to “*work on Guidelines (...) on the articulation of PAD rules (...) and the AML framework. The Guidelines should*

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<sup>14</sup> ‘The Draft Guidelines on access to financial services’ and ‘The draft Guidelines amending the RFGLs’ being together named in this IA “the new Guidelines”

<sup>15</sup> Opinion of the European Banking Authority on ‘de-risking’, EBA/Op/2022/01.

<sup>16</sup> [ARES\(2022\)1932799](#)



*consider the de-risking issue in its broadest financial inclusion dimension (...)" and to "broaden the scope of such guidelines beyond the interaction of AML and PAD requirements(...)"*.

Following the Commission's request, the EBA assessed existing EBA guidance, in particular its ML/TF RFGs that were revised in March 2021. The EBA performed a gap analysis to establish how best to respond to the Commission's request without duplicating existing provisions. On this basis, the EBA recognized that several aspects would indeed benefit from further regulatory clarifications, as pointed in its Opinion on de-risking. In particular, the EBA assessed that one area, in which new guidance would be necessary, is the one related to NPO customers. That is because NPOs, which are legal entities, are not covered by the rights provided by the Directive 2014/92/EU (the Payment Account Directive - PAD).

As such, following this gap analysis and to respond to the Commission's request without duplicating existing provisions, the EBA, having consulted with competent authorities that are responsible for the AML/CFT supervision of financial institutions, is proposing a two-tiered approach that consists of:

- Adding an annex to the ML/TF RFGs, focusing on customers that are NPOs ('The Draft Guidelines amending the RFGs').
- Issuing a new set of guidelines ('The Draft Guidelines on access to financial services'): the Guidelines on policies and controls for the effective ML/TF risk management when providing access to financial services, which build on the right to access a payment account and clarify the different ways to mitigate ML/TF risks in an efficient manner.

## B. Policy objectives

The Draft guidelines amending the RFGs aim to support credit and financial institutions in their understanding of the specificities of prospective or existing customers who are NPOs and in their assessment of the ML/TF risks associated with such customers. On the other hand, the Draft Guidelines on access to financial services address financial access in a broader sense and provide general principles for the provision of such access, for all types of customers. These draft Guidelines' overall objective is to address the main drivers of unwarranted de-risking of legitimate customers, as identified in the above-mentioned EBA Opinion on de-risking.

The Draft guidelines amending the RFGs, therefore, clarify the steps that institutions should take to get a good understanding of how an individual NPO is set up and operates, as well as the factors they should consider when assessing the ML/TF risks associated with a business relationship with customers which are NPOs. This is a key to ensure that financial institutions assess the risks associated with NPOs in an efficient and comprehensive manner and determine the types of transactions that will be expected in the course of the business relationship once established, in order to avoid delay in transfers of funds, for instance.



The Draft Guidelines on access to financial services give details on how ML/TF risks associated with certain types of customers can be mitigated effectively, including by adjusting the intensity of monitoring measures, or by limiting the access to targeted products or services, in line with a risk-based approach. These details are divided in one general part, which relates to all types of customers and in a more specific part that deals with customers that are likely to be excluded from financial services access (such as, for instance, refugees or homeless individuals) and for whom access to financial services is a pre-requisite for the fulfilment of their basic or essential needs.

### C. Options considered, assessment of the options and preferred options

Section C presents the main policy options discussed and the decisions made by the EBA during the development of the Draft Guidelines on access to financial services and the Draft Guidelines amending the RFGLs. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

**Draft Guidelines on access to financial services – In the adjustment of the intensity of monitoring measures section, add a specific part about individuals that may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation.**

The Draft Guidelines on access to financial services contain a section on the adjustment of the intensity of monitoring measures. A first and general point requests institutions to set out in their policies and procedures how they adjust the level and intensity of monitoring in a way that is commensurate to the ML/TF risk associated with the customer, and this point also broadly outlines the steps that these monitoring measures should include. In addition to this broad point covering all types of customers, the EBA evaluated the possibility to provide institutions with more specific and detailed guidance on the adjustment of these monitoring measures in situations where individuals may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation, which are usually required for accessing financial services. Two options have been considered by the EBA in this regard:

**Option 1a: Adding specific guidance about individuals that may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation.**

**Option 1b: Not Adding specific guidance about individuals that may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation.**

As highlighted by the EBA Opinion on de-risking and EBA's Consumers Trends Reports<sup>17</sup>, an increasing number of individuals face difficulties to open a bank account, thus leading to the financial exclusion and further marginalization of such individuals in EU societies. The move towards a "cashless" society reinforces the need to access financial services to fulfill basic needs.

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<sup>17</sup> Opinion of the European Banking Authority on 'de-risking', EBA/Op/2022/01; EBA Consumer Trends Report, EBA/REP/2021/04.



On this matter, as also described by several organizations' reports, vulnerable individuals (such as homeless persons or refugees) are particularly affected by these difficulties<sup>18</sup>. This is because very often these individuals are unable to provide traditional forms of identity documentation. Even though the Payment Account Directive provides in its Article 16 a *“Right of access to a payment account with basic features”* for all individuals legally resident in the EU, this can be in conflict with the requirements of Article 13 of the AMLD, which requires financial institutions to *“identify the customer and verify the customer’s identity on the basis of documents”*. This due diligence requirement can be a strong disincentive for the institutions to provide access to financial services when a prospective customer is unable to provide such documentation.

As a result of those observations, providing additional guidance addressed to institutions to support them in handling applications for the opening bank account of those individuals with no traditional form of Identity documentation proves necessary. Such guidance would equip them to effectively manage financial crime risks whilst not excluding vulnerable customers.

The costs incurred for the institutions to evaluate and accept alternatives in situation where a customer has credible and legitimate reasons to be unable to provide traditional forms of identity documentation would be the implementation of more granular and tailored policies and procedures for their account opening process. However, the Draft Guidelines on access to financial services would give guidance on the type of documents that could be used in this regard by institutions to facilitate the opening of a bank account for these specific categories of customers. Furthermore, having such policies in place would result in a reputational gain for the institutions, who would be able to demonstrate their commitment to contribute to the financial inclusion of vulnerable customers. Overall, as also the Guidance would apply to all customers that may have credible and legitimate reasons to be unable to provide traditional forms of identity documentation - and would not be restrictive to just a segment or a type of these customers -, this approach would strengthen social inclusion at EU level. In addition to these reputational benefits, institutions could benefit from the incomes – although not significant - incurred by the opening of more customer accounts.

On these grounds, **the Option 1a has been chosen as the preferred option.**

#### Draft Guidelines on access to financial services – Documentation of refusal of a business relationship and the reason for doing so

As explained above, the draft Guidelines on access to financial services first contain general principles that apply to all type of customers and provide details on how ML/TF risks associated with certain types of customers can be mitigated effectively, including by adjusting the intensity of monitoring measures and by limiting the access to targeted products or services, in line with a risk-

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<sup>18</sup> Finance Watch, Financial exclusion: Making the invisible visible. A study on societal groups encountering barriers to accessing financial services in the EU, March 2020; FEANTSA, Homelessness services provide solutions to increase financial inclusion of people experiencing homelessness in increasingly cashless societies, 2022.



based approach. To enhance the impact of the new Guidelines and to monitor their implementation in the institutions, the EBA considered two options:

**Option 2a: Adding a requirement to document the decision to refuse a business relationship and the reason for doing so.**

**Option 2b: Not adding a requirement to document the decision to refuse a business relationship and the reason for doing so.**

Decisions made by institutions to reject or terminate a business relationship might have several negative consequences. In addition to the above-mentioned vulnerable individuals' exclusion, the negative consequences can also affect other types of de-risked customers such as payment institutions, Fund managers, FinTech firms, NPOs or diamond-trade businesses. De-risking can unfairly exclude legitimate customers in certain cases. Moreover, once rejected by institutions, these customers may resort to alternative payment and banking channels where they will be less monitored and, as a consequence, the AML/CFT prevention could be hampered. Enhancing the quality and granularity of the decision process to de-risk a particular customer is thus very crucial, and all the principles disclosed in the current Draft Guidelines provide added value in this context.

Nevertheless, in the EBA's views, not documenting the decision and reasons behind refusal of business relationship, would prevent institutions' internal controls on the correct implementation of EBA's guidance and strongly alter the objectives of the Draft Guidelines. It would also make effective supervision difficult. Moreover, the requirement to document the decisions will, before a possible refusal, naturally streamline the entire account opening process. In addition, documenting the decisions would allow institutions to better defend their decisions in case of claims by rejected customers.

As this documenting requirement would be a strong pillar supporting the correct implementation of the Draft Guidelines on access to financial services, it would indirectly trigger the reputational gains for the institutions described in the Option 1 section and would also imply financial incomes incurred by the opening of more customer accounts.

As a result, the costs incurred by the requirement to document decisions made to refuse business relationship are exceeded by the above-mentioned benefits.

On these grounds, **the Option 2a has been chosen as the preferred option.**

#### Draft guidelines amending RFGs - Add a specific section for NPO

The difficulties faced by NPOs to access financial services have been highlighted by several international reports.<sup>19</sup>

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<sup>19</sup> FATF, COMBATING THE ABUSE OF NON-PROFIT ORGANISATIONS (RECOMMENDATION 8) 2015; NYU Paris EU Public Interest Clinic, Bank De-Risking of Non-Profit Customers, 2021



These difficulties were also reported to the EBA during the series of information gathering exercises that it conducted in 2020-2021 and where NPOs raised the fact that they experienced obstacles to access financial services, such as the impossibility to open bank account or extensive delays in cash transfers in certain high-risk jurisdiction. NPOs also indicated to the EBA that the reason of these difficulties was a stricter and risk-adverse application by the institutions of the AML/CFT requirement. On the other hand, some institutions reported to EBA that they indeed refused to provide financial services to NPOs because it was often difficult for them to understand their business model and structure, which can be very complex.

Based on these observations, two options have been envisaged by the EBA:

**Option 3a: Adding a section in the RFGLs to guide institutions for conducting their due diligence of customers that are NPOs.**

**Option 3b: Not adding a section in the RFGLs to guide institutions for conducting their due diligence of customers that are NPOs.**

As detailed in the EBA's Opinion on de-risking, one of the main reasons raised by institutions for de-risking NPOs is linked to the difficulties to understand the structures and business models of NPOs. Another key driver of de-risking of NPOs is the fact that some of them have operations in high-risk jurisdictions. De-risking of NPOs have several consequences, including difficulties to access a bank account in order to operate, or difficulties in the transfers of funds in certain jurisdictions where the NPO operates. This has an impact on NPOs' activities and the delivery of their programs.

In view of these challenges that are very specific to this group of customers, the EBA saw merits in drafting guidelines dedicated to NPOs as part of the RFGLs. It should be stressed that NPOs' activities are essential for providing support and relief not only within the EU, but also across the globe. These include the delivery of humanitarian aid in the context of war or natural disasters, as also medical assistance and the provisions of basic services to populations in need. While international reports highlight that NPOs can be abused for terrorist financing purposes, not all NPOs are exposed to these risks, and the extent to which these risks can materialize vary greatly across NPOs. ML/TF risks associated with customers that are NPOs therefore must be carefully assessed.

For the institutions, such individual risk assessment would require additional time to understand the business model of each NPO, thus incurring costs. However, this additional time would be compensated by the proposed EBA new section in the RFGLs that provides guidance on the risk factors to consider when dealing with customers that are NPOs. Similarly, the EBA's proposition to encourage financial institutions to have a dedicated contact point for NPOs, even though this could potentially incur initial cost in terms of resource and training, would ease and speed this process and thus decrease related costs in the long term.

Finally, costs will be exceeded by the reputational gain for the financial sector to serve a sector that is not-for-profit. This not-for-profit sector's aim is to provide support to populations in need and



mitigated by the financial incomes, although often low, related to the additional NPOs relationships.

On all these grounds, **the Option 3a has been chosen as the preferred option.**

#### Add a specific section for other categories of customers particularly affected by de-risking

The afore-mentioned letter from the European Commission of March 2022 requested that the EBA takes into consideration some specific situations where de-risking is particularly acute, for instance when affecting individuals that are Politically Exposed Persons ('PEPs') or customers who appear to be excluded from access to financial services because they are subject to the US tax regime (i.e., 'accidental Americans').

Based on this suggestion from the European Commission and EBA's own findings, the EBA considered two options:

**Option 4a: Adding a specific new set of guidelines related to other categories of customers particularly affected by de-risking.**

**Option 4b: Not adding a specific new set of guidelines related to other categories of customers particularly affected by de-risking.**

As mentioned previously, the EBA performed a gap analysis to establish how best to respond to the Commission's request without duplicating existing provisions. As regards to the PEPs, the RFGLs already provide a number of clarifications that support credit and financial institutions to manage ML/TF risks associated with individual business relationships in an effective manner when customers are PEPs. A detailed guide for institutions on how to approach PEPs is thus not needed. On the other hand, the Draft Guidelines on access to financial services will apply to all type of customers, including PEPs. These Draft Guidelines will as such enhance the institutions' effectiveness of ML/TF risk management when providing PEPs with access to financial services and clarify the different ways to mitigate their ML/TF risks in an efficient manner. These Draft Guidelines' principles will also – for instance, with the requirement to document the decision to refuse or terminate a business relationship and the reason for doing so – enhance the implementation of the already existing provisions related to PEPs outlined in the RFGLs.

For what concerns 'accidental Americans', these customers, should they be EU citizens or should they legally reside in the EU, are entitled to access to a payment account with basic features, and therefore the Draft Guidelines on access to financial services, that the EBA is proposing, are applicable in this context. Therefore, as for the PEPs, the application of these Draft Guidelines will enhance the institutions' effectiveness of ML/TF risk management when providing access to financial services to 'accidental Americans'. These Draft Guidelines will also clarify the different ways to mitigate their ML/TF risks in an efficient manner. The EBA in this regard underlines that reporting obligations under the Foreign Account Tax Compliance Act (FATCA) do not constitute grounds for denying such access under the PAD.





Therefore, the EBA considered that the specific situation of PEPs, ‘accidental Americans’ or any other customers (including legal entities), affected by unwarranted de-risking, would be addressed via the requirements set in the Draft Guidelines on access to financial services. Finally, not adding a specific new set of guidelines for each of these customers’ categories will not trigger additional costs for the institutions.

On all these grounds, **the Option 4b has been chosen as the preferred option.**

**The new Guidelines – Adding a new set of guidelines on NPOs in the RFGLs and issuing a new set of guidelines to address de-risking and access to financial services in a broader sense**

As mentioned above, after analysing the issues related to de-risking and having performed a gap analysis, the EBA, as foreseen in the above options, opted for a two-tier approach:

- Adding guidance for due diligences on customers that are NPOs.
- Adding guidance for the provision of financial services for all customers with a particular focus on vulnerable customers.

When it came to the way of adding that guidance in the regulatory framework, two options have been envisaged by the EBA:

**Option 5a: Issuing one single new set of guidelines covering due diligences on customers that are NPOs and addressing de-risking and access to financial services in a broader sense.**

**Option 5b: Adding in the RFGLs a new set of guidelines covering due diligences on customers that are NPOs and issuing a new set of guidelines to address de-risking and access to financial services in a broader sense.**

The ML/TF Risk Factors Guidelines already provide guidance on the ML/TF risk factors that credit and financial institutions should consider when assessing risks associated with individual business relationships and occasional transactions. Since one of the major difficulties for institutions when dealing with NPOs is related to the understanding of their business models and the ML/TF risks associated therewith, the RFGLs were chosen as the right place to include the risk factors associated with customers that are NPOs. Furthermore, the issues encountered by NPOs are very specific and unique to this sector. For this reason, option 5a was not chosen.

On the other hand, the issue of de-risking is considered as such important concern that, in order to ensure more visibility and consistency, dedicating a distinct set of guidelines on access to financial services and effective ML/TF risk management seemed key to the EBA.

On these grounds and because the costs linked to this choice are marginal, **Option 5b has been chosen as the preferred option.**



## D. Conclusion

The development of the draft Guidelines on policies and controls for the effective ML/TF risk management when providing access to financial services, which clarify the different ways to mitigate ML/TF risks in an efficient manner, was deemed necessary to mitigate the negative impact of unwarranted de-risking and to decrease as a result the exclusion of legitimate and in some cases vulnerable customers. Furthermore, even though NPOs are also concerned by the former Draft Guidelines, the amendment of the RFGLs is necessary to provide specific support to institutions for the due diligence of NPOs that have often very complex structure and business model. Together, these new guidelines will improve the due diligence process required at both: the onboarding stage and in the course of the business relationship, and ultimately will contribute to improve the social impact of credit and financial institutions. The costs associated with a more granular and tailored customers' due diligence policies and procedures will be exceeded by the afore-mentioned benefits. Hence, these new Guidelines should achieve their objectives of better and fairer financial services access with acceptable costs.



## 6.2. Overview of the questions for the public consultation

### **Section 4 – Guidelines amending the ML/TF risk factors Guidelines:**

1. Do you have any comments on the annex that covers NPO customers?

### **Section 5 – Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services:**

2. Do you have any comments on the section ‘Subject matter, scope and definitions’? If you do not agree, please set out why you do not agree and if possible, provide evidence of the adverse impact provisions in this section would have.
3. Do you have any comments on the section titled ‘General requirements’?
4. Do you have any comments on the section titled ‘adjusting monitoring’?
5. Do you have any comments on the section titled ‘applying restrictions to services or products’?
6. Do you have any comments on the section titled ‘Complaint mechanisms’?