BNP PARIBAS

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EBA Consultation on revised ML/TF Risk factors Guidelines

BNP Paribas' response

BNP Paribas welcomes the opportunity to express its views on the European Banking Authority's (EBA) draft Guidelines under Articles 17 and 18 (4) of Directive (EU) 2015/849 (AMLD5) 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 Risk Factor Guidelines"), amending Guidelines JC/2017/37. As a leading bank in the Eurozone, BNP Paribas strongly supports the work of the EBA in its task to prevent the misuse of the financial system for the purposes of illicit activity.

BNP Paribas is of the opinion that further harmonisation of practices across Member States to assess AML/CFT risks is a key factor of success against these illicit activities. On this matter, we consider that the Risk Factor Guidelines will greatly help to reach this objective and we put great expectation on the legislative proposals that the EU Commission will present in Q1 2021. We would have however expected the Risk Factor Guidelines to give further harmonisation on the five following topics:

- Business-wide assessment (1.11; 1.14; 1.15; 1.16; 1.17; 1.18; 1.19; 1.20): amendments proposed to the Risk Factor Guidelines give further guidance on the way business-wide assessment should be performed. However, considering the variety of practices among firms, we suggest providing more precise and detailed guidelines and especially explaining more fully the links expected between the business-wide and the individual risk assessments.
- Beneficial ownership registers (4.13): we strongly support the development of an EU-wide company register that provides data firms can rely upon. With such a register, firms would be spared a considerable workload and human resources on the identification and verification of information that fall under corporate and legal entities' responsibility (Art. 30.1 of AMLD5).
- Senior Managing Officials (4.50; 8.17): a clear definition of who should be the senior managing officials who have to approve a relationship with a Correspondent bank in a non-EEA country or a PEP relationship would be welcome. We suggest using the definition given by the French regulation, which states that it must be a member of the Executive Committee or a person/function empowered by the Executive Committee.
- PEPs' screening: We suggest the addendum of guidelines on the screening of names against the lists of PEPs considering the various practices across Member States stemming from different interpretations of the existing guidelines (2.4 and 8.6). In our opinion, the screening should be limited to the persons identified as exercising a control over the customer, e.g. the customer's beneficial owner and the person(s) designated as SMO(s). We consider that, save for a few exceptions, directors do not individually have sufficient power to exercise such a control and consequently do not have to be screened against the PEP lists.
- While we consider that changes done on sectorial Guideline 9 for retail banks on virtual currencies will help firms to better assess this risk, we suggest adding two Guidelines on ICOs and on security tokens.

Another key to successfully strengthening the EU AML/CFT framework and its effectiveness is the risk-based approach that firms should consider when assessing the ML/TF risk and adjusting customer due diligence ("CDD") commensurate to identified ML/TF risks. It is important to take into account the work of the FATF in this area and in particular the FATF Recommendations and Risk-Based Approach Guidance.

On this matter, we consider that certain areas in the guidelines may orient them in a direction which differs from this approach by requesting the same guidelines for every business relationship and occasional transaction irrespective of the ML/TF risk associated with them. Such requirements would potentially put firms in a difficult situation by adding important tasks that will require considerable human resources and one can fear that this will result in de-risking decisions. This comment applies more particularly to the following themes:

- Beneficial owners: the guidelines on the identification of customer risk factors (2.3 – 2.4 – 2.7) request firms to obtain the same level of information for a beneficial owner as for a customer. There is no recommendation from FATF or provision of the AML EU directives that requires firms to obtain such information. Considering the difficulty of obtaining such information on beneficial owners who are not customers, firms could find themselves in a difficult situation where they could have to refuse or terminate relationships. Should the EBA still want to maintain these requirements, we suggest that this information, which has to be provided by corporate and other legal entities in accordance with article 30.1 of AMLD5[1], be held in central registers referred to in art. 30.2.
- Non-face-to-face relationships: the COVID-19 crisis has proven that non-face-to-face on-boarding and relationships works well and both the FATF (in its guidance on Digital Identity) and the AMLD5 state that a non-face-to-face relationship can be considered as low risk if safeguards are in place.
- Control through other means (4.17): customer due diligence to be performed on persons who may control a company without being a beneficial owner should be limited to cases where there is a suspicion that the beneficial owners are not the ones who control the company.

Additional points for which we consider that the Risk Factor Guidelines go beyond what is required by AMLD5 are:

- PEPs' list: According to guideline 4.49, firms should ensure that the information of commercially available PEP lists is up-to-date and should take additional measures where necessary. Although we fully support the necessity to identify PEPs and their RCAs, and the need to perform controls on the available lists of PEPs and RCAs, we consider that the controls to be performed by firms should remain reasonable. Efficiency and effectiveness will not come from multiple controls at firms' level but from an official reliable register of PEPs.
- High-risk third countries: Guidelines 4.53 – 4.57 on high-risk third countries do not allow a risk-based approach and give a very wide definition of a relationship with a high-risk country as it states that a business relationship always involves a high-risk country if funds are generated, received or sent to a high-risk country. This definition goes far beyond the AMLD5 requirements. We consider that EDD measures should apply for business relationships domiciled, registered or based in a high-risk third country and for occasional transactions with such countries. We understand from the EBA comments during the public hearing call on May 15th, that the EBA will amend this draft on this point. We would like however to point out that the EDD measures attached to relationships based in a high-risk third country should not apply to branches and subsidiaries of EU banks based in high-risk third countries for their domestic business

[1] Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.
Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to the obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.

relationships, when they comply with their group level AML/CFT requirements in accordance with art 19 a of AMLD5.

- Correspondent banking: We support a risk-based approach to EDD on correspondent banking relationships based on the assessment of the respondent's general risk exposure and mitigating control framework. This should not lead correspondent banks to perform on-site visits with sample testing to ensure that policies and procedures are duly implemented.
- Equivalent third countries: We note that throughout these Guidelines reference is made to assessments that firms should perform not only on countries' AML/CFT frameworks (8.9-b; 9.5-c; 16.9-b; 16.15-f; 16.20-a) but also on countries' legal systems (2.10-a), countries' AML/CFT supervision (2.10-c), countries' CDD standards (9.18)…. We suggest using a similar wording to that used in AMLD5 and referring to the "equivalent international standards".

Question 1: do you have any comments on the proposed changes to the Definitions section of the Guidelines?

Definitions

- 12. e) Non-face-to-face relationships or transactions. We note that the regulation on non-face-to-face relationships is evolving: in its appendix III, AMLD5 excludes from the list of potential higher risk factors, non-face-to-face business relationships or transactions with certain safeguards[2]. The FATF acknowledges that non-face-to-face relationship or transactions that rely on reliable, independent digital ID systems with appropriate risk mitigation measures in place, may present a standard level of risk, and may even be lower-risk where higher assurance levels are implemented… (art. 89 FTAF guidance on Digital ID). This is also in line with Guideline 4.31 of the EBA's guidance stating that *'(…) the use of electronic means of identification does not of itself give rise to increased ML/TF risk (…).* We would also like to add that some national EUs' supervisory authorities have issued guidance on video-identification recognising them as a face-to-face identification that does not give rise to the need to perform EDD.

  In terms of the fight against money laundering and terrorist financing, identification and verification of identity is the main challenge in entering into a non-face to face relationship. Apart from that, AML/CFT risks are not different for the same customer depending on whether he is in a face-to-face relationship or not. Therefore, we ask the EBA to acknowledge that video-identification may be treated as presenting the same inherent risk as face-to-face identification, where the video identification process is subject to proper safeguards. We consider as well that the case of a person acting on the firm's behalf should not be included in that definition.

  "Non-face to face relationships or transactions' means any transaction or relationship where the customer is not physically present, that is, in the same physical location as the firm ~~or a person acting on the firm's behalf~~. This may include~~s~~ situations where the customer's identity is being verified via video-link or similar technological means."

[2] Annex III to AMLD5 states that non-face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in Regulation (EU) N° 910/2014 or any other remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities, should be considered as a potential factor of higher risk.

Question 2: Do you have any comments on the proposed amendments to Guidelines 1 on risk assessment?

We welcome the amendments and changes made on the business-wide and individual risk assessments that give some clarification on this matter. As highlighted by the ESAs' joint opinions on the ML/FT risk affecting the EU's financial sector, published in 2017 and 2019, business-wide risk assessments raise concerns from competent authorities. This is the reason why we consider that these amendments may not be sufficient and that further standards are necessary. There is a need for more detailed guidelines to explain in concrete terms how a business-wide risk assessment should be set up, which template should be used (guidelines 1.11 to 1.17) and how business-wide and individual risk assessments can be linked (guidelines 1.18 – 1. 19).

Guideline 1.26 refers to the holistic view of the risk associated with a particular relationship or occasional transaction that firms should obtain. For some foreign regulators (notably in Asia), a holistic view refers to the assessment of a relationship at a business, entity, or country level (across several business lines). Our understanding is that the definition of holistic view for the EBA is not the same and means that a single risk factor should not be considered in isolation. It would be helpful if the EBA could provide a definition of the term holistic and some guidance on its scope.

We also suggest the following amendments

Keeping risk assessments up-to-date

- 1.9 – b – I - b): We do not find proportionate to ask firms to perform adverse media screening on all customers. Such a screening should be performed on a risk-based approach only.

  "The systems and controls firms should put in place to identify emerging risks include […]: b) Processes to ensure that the firm regularly reviews relevant information sources, including those specified in guidelines 1.28 to 1.30 , and in particular […]: i. In respect of individual risk assessments […], b. and in line with a risk-based approach, media reports that are relevant to the sectors or jurisdictions in which the firm is active.

- 1.10. Business-wide and individual risk assessments methodologies are formalised in procedures for which updates are performed on a regular basis or upon a trigger event. We do not see how the review of a methodology can be done on a risk-sensitive- basis. Clarification is needed on this point.

  "Firms should determine the frequency of wholesale reviews of their business-wide and individual risk assessments methodology ~~on a risk-sensitive basis."~~

Source of information

- 1.32. We do not see the necessity of determining the number of sources. We suggest deleting this reference and specifying in the title that this guideline applies to the business-wide risk assessment

  "sources of information for business-risk assessment"
  "Firms should determine the type ~~and numbers~~ of sources on a risk-sensitive basis, taking into account the nature and complexity of their business. Firms should not normally rely on only one source to identify ML/TF risks."

Question 3: Do you have any comments on the proposed amendments to Guidelines 2 on identifying ML/TF risk factors?

Guidelines on the identification of customer risk factors request firms to obtain the same level of information about a beneficial owner as for a customer. Although those requirements are already in the existing guidelines and as such not part of this consultation we would like however to point out the fact that it is in fact very difficult for firms (if not impossible) to obtain such information from beneficial owners which are not customers and with which the firm has no contact in most cases. Moreover, there is no recommendation from FATF or provision of the AML EU directives that require firms to obtain such information. Such a requirement can place firms in difficult situations where they could have to refuse or terminate relationships with numerous clients.

Customer risk factors

- Following the comment above, we suggest deleting reference to beneficial owners in guidelines: 2.3-a (business or professional activity); 2.3-b (reputation); 2.3-c (nature and behaviour); 2.4-a (links to sectors commonly associated with higher corruption risk); 2.4-b (link to sectors associated with higher ML/TF risk); 2.4-c (sectors that involve significant amount of cash); 2.4-f (prominent position of high public profile); 2.4-j (beneficial owner's background consistent with what the firm knows about their former, current or planned business activity, their business turnover, the source of funds and source of wealth); 2.6- j (beneficial owner's source of wealth or source of funds.

- 2.4 - e) Generally speaking we are of the opinion that, contrarily to a beneficial owner or the person designated as SMO, a director does not have the required level of control to use the customer for laundering the proceeds of corruption. Consequently, we consider that the screening of directors against PEP lists will be non-value but that this screening should be done for the SMO(s).

  "Does the customer have political connections, for example, are they a Politically Exposed Person (PEP), or is their beneficial owner or SMO a PEP? ~~Does the customer or beneficial owner have any other relevant links to a PEP, for example are any of the customer's directors PEPs and, if so, do these PEPs exercise significant control over the customer or beneficial owner?~~ Where a customer or their beneficial owner or SMO is a PEP, firms must always apply EDD measures in line with Article 20 of Directive (EU) 2015/849."

- 2.5 - a) We suggest amending Guideline 2.5 on adverse media screening to allow firms to take a risk-based approach. We consider that most customers do not have a high enough public profile to generate a useful media footprint.

  "Firms should take a risk-based approach to adverse media screening. The following risk factors may be relevant when identifying ~~the~~ material risk associated with a customer's or beneficial owners' reputation: a) Are there adverse media reports or other relevant sources of information about the customer, for example are there any allegations of criminality or terrorism against the customer or the beneficial owner? If so, are these reliable and credible? Firms should determine the credibility of allegations on the basis of the quality and independence of the source of the data and the persistence of reporting of these allegations, among other considerations. Firms should note that the absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing."

Terrorist financing

- *2.7 - a)* Identifying links between a client and a person included in a list of persons, groups and entities involved in terrorist acts can be possible in certain cases when, for instance, members of the same family open various accounts in the same branch of the firm. In other cases, it can be very difficult if not impossible to identify such links and firms should not be liable for that in a general manner. We suggest amending the sentence as follows:

  "Is the customer or the beneficial owner a person included in the lists of persons, groups and entities involved in terrorist acts and subject to restrictive measures, or does the firm know that he/she has ~~are they known to have~~ close personal or professional links to persons registered on such lists (for example, because they are in a relationship or otherwise live with such a person)?"

- *2.7 - b)* Investigations are rarely publicly known and if it is the case they do not always provide sufficient identification data (e.g. date of birth, country of residence…) or can be erroneous. Consequently, it would be very difficult for a financial institution to identify a client that would meet one of those criteria. Furthermore, there is no regulatory requirement to identify professional or personal links with certain countries. We suggest deleting this sentence.

  ~~"Is the customer or the beneficial owner a person who is publicly known to be under investigation for terrorist activity or has been convicted for terrorist activity, or are they known to have close personal or professional links to such a person (for example, because they are in a relationship or otherwise live with such a person)? "~~

- 2.7 - f) makes reference to b that we suggest deleting.

  Does the customer transfer or intend to transfer funds to persons referred to in (a) ~~and (b)?~~

Countries and geographical areas

- 2.9 - c) This Guideline has been amended but the definition of "personal links and legal interests" is unclear. We do not see what the scope could be (which family members?) and how firms could get this information. We ask for clarification or the deletion of this Guideline.

  ~~"When identifying the risk associated with countries and geographical areas, firms should consider the risk related to c) jurisdictions to which the customer and beneficial owner have relevant personal or business links, or financial or legal interests".~~

- 2.10. In most cases, firms cannot know where their clients' funds have been generated as their monitoring is done on incoming and outcoming transfers as required by regulation. In some instances however (notably Wealth Management) such information can be relevant and consequently we suggest putting this requirement as an option.

  "Firms should note that the nature and purpose of the business relationship, or the type of business, will often determine the relative importance of individual country and geographical risk factors. For example: a) "Should they know, w~~W~~here the funds used in the business relationship have been

generated abroad, the level of predicate offences to money laundering and the effectiveness of a country's legal system will be particularly relevant."

- 2.11 – b) The Guidelines have been amended to add to risk factors that firms should consider when identifying the effectiveness of a jurisdiction's AML/CFT regime, the fact that the country's law prohibits the implementation of group-wide policies and procedures.

  We would like to remind that the Commission delegated Regulation (EU) 2019/758 applies only to foreign countries where a firm's branch or subsidiary is established. The risk factor cannot be required for countries where a firm has no presence.

  "Risk factors firms should consider when identifying the effectiveness of a jurisdiction's AML/CFT regime include where the firm has a branch or a subsidiary registered: b) Does the country's law prohibit the implementation of group-wide policies and procedures and in particular are there any situations in which the Commission delegated Regulation (EU) 2019/758 should be applied?"

Delivery channel risk factor

- 2.21 – a - i) Assessing the fact that the customer may have sought to avoid a face-to-face meeting deliberately for reasons other than convenience or incapacity, is subjective and may be difficult to analyse. We consider that what is important is that the non-face-to-face identification process is secured through procedures and reliable telecom means. We suggest deleting this guideline.

  ~~*2.21. When assessing the risk associated with the way in which the customer obtains the products or services, firms should consider a number of factors including:*~~
  ~~*a) whether the customer physically present for identification purposes. If they are not, whether the firm i) considered whether there is a risk that* **the customer may have sought to avoid face-to-face contact deliberately for reasons other than convenience or incapacity**~~*;* ii. ~~*used a reliable form of non-face-to-face CDD; and* iii. *taken steps to prevent impersonation or identity fraud."*~~

Question 4: Do you have any comments on the proposed amendments and additions in Guidelines 4 on CDD measures to be applied by all firms?

The main issues that we would like to underline under Guidelines 4 are the following:

- Guidelines (4.12): firms should not be requested to systematically ask to their customers who their beneficial owners are when this information can be obtained via other sources.
- Non-face-to-face relationship (4.29-4.31) should not be considered per se as a factor of higher risk, should strict safeguard conditions to the identification process be in place.
- PEPs lists (4.49-4.50): controls on the commercial PEP lists should be requested on a best effort basis and firms should not be considered liable should the information on some PEPs be missing.
- High-risk third countries (4.53 – 4.55): clarification should be given on the definition of a business relationship with a high-risk third country and branches and subsidiaries of banking groups based in HRTC should not be required to apply the mandatory EDD measures to their domestic business relationships should they comply with their group requirements.
- Sample tests on all transactions processed (4.74): ex-post review to test the reliability and appropriateness of the transaction monitoring systems should be based on a sample of external triggers and alerts generated and not on transactions processed.

Customer due diligence

- 4.7 - a) Due diligence to be applied to customers and beneficial owners may be defined by type of customer but not by category of products and services, except for funds. We suggest deleting this reference to products and services or giving clarifications.

  "Firms should set out clearly, in their policies and procedures, a) who the customer and, where applicable, beneficial owner is for each type of customer ~~and category of products and services,~~ and whose identity has to be verified for CDD purposes.

CDD: Financial inclusion

- 4.9 - 4.10. While we fully understand the need to allow everyone the possibility to open a bank account and perform transactions, we also have to abide by existing regulations, both at European and national levels. In particular, firms must comply with art. 13.1 of the AMLD5 request to verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source. Article 14.4 of AMLD5 states that if it is not possible to verify a person's identity as requested, the bank must refuse to enter intoa business relationship or carry out a transaction. It is consequently very difficult for a firm to take another direction, bearing also in mind that in frequent cases, the FT risk can be high. We consequently need more clarity and homogneity in regulations on this matter.

  ~~*"Where a customer has legitimate and credible reasons for being unable to provide traditional forms of identity documentation, firms should consider mitigating ML/TF risk in other ways, including by: a) Adjusting the level and intensity of monitoring in a way that is commensurate to the ML/TF risk associated with the customer, including the risk that a customer who may have provided a weaker form of identity documentation may not be who they claim to be"*~~

CDD: Beneficial owners

- 4.12. There is and there should be no obligation to ask clients who their beneficial owners are as this information can also be available via other sources (Swift registry, beneficial owner register, financial statements…).
  We agree that on a risk-based approach this information has to be verified (for certain types of clients, scoring level, doubts) and, in this case, the client may be asked further information. Consequently, we suggest the following wording:

  "When discharging their obligations set out in Article 13(1)(b) of Directive (EU) 2015/849 to understand the customer's ownership and control structure firms should take ~~at least~~ the followings steps :
  a) *Firms ~~should ask the customer~~ obtain information on who the customer's beneficial owners are;*
  b) *On a risk-based approach, f~~F~~irms should document and verify the information obtained.*
  ~~*c) Firms should then take all necessary steps to verify the information: to achieve this, firms should consider using beneficial ownership registers where available.*~~
  ~~*d) Steps b) and c) should be applied on a risk-sensitive basis".*~~

CDD: Beneficial ownership registers

- 4.13. In line with a risk-based approach, we believe that the information contained in the beneficial ownership registers should be sufficient to satisfy the identification of beneficial

owners in case of standard CDD and when there is no suspicion that the person listed in the register is not the ultimate beneficial owner.
Article 30(4) of AMLD5 states that obliged entities should report any discrepancies found between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. Further guidance on these reporting obligations would be welcome in order to avoid too much workload on firms and a harmonization of practices among Member States. The guidance should allow firms to take a flexible approach to how and when they implement the discrepancy reporting obligations.

~~*"Firms should be mindful that using information contained in beneficial ownership registers does not, of itself, fulfil their duty to take adequate and risk-sensitive measures to identity the beneficial owner and verify their identity*~~. *Firms may have to take additional steps other than just using the information contained in beneficial ownership registers to identify and verify the beneficial owner, in particular where the risk associated with the business relationship is increased or where the firms have doubts that the person listed in the register is not the ultimate beneficial owner."*

CDD: Control through other means

- 4.14. The requirement to identify and verify the identity of beneficial owners is linked to the obligation to understand the customer's ownership and control structure. It is for us the baseline of a risk-based analysis on who controls the company. Therefore we suggest the following wording:

  "The requirement to identify, and verify the identity of, the beneficial owner related only to the natural person who ultimately owns and controls the customer also entails taking ~~*However, firms must also take*~~ *reasonable measures to understand the customer's ownership and control structure."*

- 4.15 - b) Customer Due Diligence requires firms to identify the beneficial owner, to take reasonable measures to verify that person's identity and to assess and, as appropriate, to obtain information on the purpose and intended nature of the business relationship. Assessing if there is a "legitimate legal or economic reason" for explaining a complex ownership and control structure does not fall under this requirement and is difficult to perform as the definition of "legitimate legal or economic reason" is unclear. We suggest deleting this guideline.

  "The measures firms take to understand the customer's ownership and control structure should be sufficient so that the firm can be reasonably satisfied that it understands the risk associated with different layers of ownership and control. In particular, firms should be satisfied that,
  a) *the customer's ownership and control structure is not unduly complex or opaque; or*
  b) ~~*complex or opaque ownership and control structures have a legitimate legal or economic reason. "*~~

- 4.17. The check that the person who controls a company is not someone other than the beneficial owner cannot be done for each client but on a risk-based approach e.g. if the client's file raises any suspicion of 'control through other means. We do not see the necessity of such a verification when there is no suspicion.

"Firms should pay particular attention to persons who may exercise 'control through other means' when there is a suspicion that the beneficial owners identified are not the ones or the only ones who control the company. Examples of 'control through other means' firms should consider include, but are not limited to:

a) control without direct ownership, for example through close family relationships, or historical or contractual associations;

b) using, enjoying or benefiting from the assets owned by the customer;

c) responsibility for strategic decisions that fundamentally affect the business practices or general direction of a legal person."

CDD: Identifying the customer's senior managing officials

- 4.20. As regards the identification of senior managing officials as beneficial owners, and considering that firms have to take reasonable measures to understand the customer's ownership and control structure (4.12), we are of the opinion that guideline 4.20 should be amended to avoid any confusion with the terms "all possible means" or "plausible".
  We consider as well that the reason why the natural person who ultimately owns or control the customer cannot be identified do not necessarily have to be given by the customer (e.g. state-owned entities, listed companies, supranational organisations…)..

  "Firms should resort to identifying the customer's senior managing officials as beneficial owners only if:
  a) ~~*They have exhausted all possible means for identifying the natural person who ultimately owns or controls the customer;*~~
  b) ~~*Their inability to identify the natural person who ultimately owns or controls the customer does not give rise to suspicions of ML/TF; and*~~
  c) *They are satisfied that the reason ~~given by the customer as~~ why the natural person who ultimately owns or controls the customer cannot be identified does not give rise to suspicions of ML/TF~~; is plausible~~."*

CDD: Identifying the beneficial owner of a public administration or a state-owned enterprise

- 4.24. We would like to underline that a beneficial owner has no authority to act on the customer's behalf. We suggest deleting this guideline or obtaining clarification on the EBA's expectations in this regard.

  ~~"Where the customer is a public administration or a state-owned enterprise), and in particular where the risk associated with the relationship is increased, for example because the state-owned enterprise is from a country associated with high levels of money laundering corruption, firms should take risk-sensitive steps to establish that the person senior managing official they have identified as the beneficial owner is properly authorised by the customer to act on the customer's behalf~~".

- 4.25. We support a risk-based approach to PEPs and agree that a legal entity should not be treated as a PEP-related entity and subject to EDD just because it has a PEP as a senior managing official. It would also be useful to clarify that EDD does not need to be applied if the senior managing official is a PEP only because he/she is a senior managing official of the public administration or state-owned entity client of the firm.

"Firms should also have due regard to the possibility that the senior managing official may be a PEP in their own right. Should this be the case, firms must ~~apply EDD measures to that senior managing official in line with Article 18 of AMLD5 and~~ assess whether the extent to which the PEP can influence the customer gives rise to increased ML/FT risk and whether applying EDD measures to the client may be necessary."

CDD: Evidence of identity

- 4.26. Article 13.1.b of AMLD5 does not require banks to identify UBOs on the basis of independent information in any case but states that the obliged entity should take reasonable measures to verify the beneficial owner's identity so that it is satisfied that it knows who the beneficial owner is. We suggest aligning guideline 4.26 to AMLD4.

  "Firms must verify their customer's identity and, where applicable, beneficial owners' identity, on the basis of ~~reliable and independent information and data, whether this is obtained remotely, electronically or in documentary form~~ a risk-based approach as per art. 13 (1) (a) and (b) of AMLD4."

CDD: Non-face to face situations

- 4.29-4.31. In relation to situations where transactions are performed in non-face-to-face situations, we would like the EBA to refer to comments made on definitions in Guideline 1.2.
  We would also like to have some clarity on occasional transactions that could be conducted remotely.

  "To perform their obligations under Article 13(1) of Directive (EU) 2015/849 and paragraph 88, where the business relationship is initiated, established, or conducted in non-face to face situations or an occasional transaction is done in non-face-to-face situations, firms should
  have regard to the fact that the use of electronic means of identification does not of itself give rise to increased ML/TF risk, in particular where these electronic means provide a high level of assurance under Regulation (EU) 910/2014
  ~~a) take adequate measures to be satisfied that the customer is who he claims to be; and~~
  ~~b) assess whether the non-face to face nature of the relationship or occasional transaction gives rise to increased ML/TF risk and if so, adjust their CDD measures accordingly. When assessing the risk associated with non-face-to-face relationships, firms should have regard to the risk factors set out in paragraph 52.~~
  4.30. Where the risk associated with a non-face to face relationship or an occasional transaction is increased, firms should apply EDD measures in line with paragraphs 105 and following. Firms should consider in particular whether enhanced measures to verify the identity of the customer or enhanced ongoing monitoring of the relationship would be appropriate.
- ~~4.31. Firms should have regard to the fact that the use of electronic means of identification does not of itself give rise to increased ML/TF risk, in particular where these electronic means provide a high level of assurance under Regulation (EU) 910/2014~~

CDD: Establishing the nature and purpose of the business relationship

- 4.38 - c and f). We suggest aligning Guideline 4.38 c) with the legislative provision of art 13 AMLD4 whereby collecting information with regards to the value and source of funds that will be flowing through the account is solely required on a risk-based basis.
  Guideline 4.38 f) is unclear. A "normal behaviour" is difficult to assess in many cases and can lead to various misunderstandings. We suggest deleting this guideline.

"The measures firms take to establish the nature and purpose of the business relationship should be commensurate to the risk associated with the relationship and sufficient to enable the firm to understand who the customer is, and who the customer's beneficial owners are. Firms should ~~at least~~ take steps to understand:
a) *The nature of the customer's activities or business;*
b) *Why the customer has chosen the firm's products and services;*
c) *The value and sources of funds that will be flowing through the account, when necessary;*
d) How the customer will be using the firm's products and services;
e) *Whether the customer has other business relationships with other parts of the firm or its wider group, and the extent to which this affects the firm's understanding of the customer; and*
f) ~~*What constitutes 'normal' behaviour for this customer or category of customers."*~~

Enhanced customer due diligence (EDD)

- 4.46 - c) We note a typo that would induce that every single transaction of a customer with a high-risk country should trigger EDD.

  "…firms must always treat as high-risk c) where a firm maintains a business relationship or carries out an occasional transaction involving high-risk countries following a risk-based approach;

EDD: Politically Exposed Persons

- 4.49. Although we fully support the necessity to identify PEPs and their RCAs, and the need for firms to perform controls on the available lists of PEPs and RCAs, we consider that these controls should remain feasible. Considering the large number of individuals reported on the commercial lists (more than 1 million), it is not possible to perform sufficient controls in order to get a clear assurance that the lists are complete and up-to-date. This issue can only be tackled with official lists of national PEPs, that would avoid any misunderstanding and failure. We ask for more clarity on what is meant by "inconclusive" and "not in line with the firm's expectations" and we would like to point out that the automated screening of names against the PEP lists complements the on-going human vigilance.

  "Firms that use commercially available PEP lists should ensure on a best effort basis that information on these lists is up-to-date and that they understand the limitations of those lists. Firms should take additional measures where necessary, for example, in situations where they know that their automated screening framework is ~~their screening results are inconclusive or~~ not in line with their ~~firm's~~ expectations."

- 4.50 – b) Without a clear definition of who should be a senior manager, implementation rules will differ from one country to another and may be from one firm to another. We agree that the manager who should give his/her approval can hold several positions according to the size and organisation of the firm; however, clearer guidelines would be welcome. On this specific point, we suggest adopting the rule from the French regulation which states that the opening of a relationship with a correspondent bank in a non-EEA country should be approved by a member of the executive body or by any person empowered to do so by the executive body.

  "Firms that have identified that a customer or beneficial owner is a PEP must always:
  b) Obtain senior management approval for entering into, or continuing, a business relationship with a PEP. The senior manager should be a member of the executive body or have been

empowered by the executive body ~~The appropriate level of seniority for sign-off should be determined by the level of increased risk associated with the business relationship, and the senior manager approving a PEP business relationship should have sufficient seniority and oversight to take informed decisions on issues that directly impact the firm's risk profile."~~

EDD: High-risk third countries

- 4.55. This guideline gives too large a definition of what should be considered as a business relationship or a transaction involved in a high-risk country. One can understand that any single payment involving a high-risk third country would induce the client to be considered as high-risk and subject to EDD. It should be clarified that:
  - EDD measures should apply to business relationships resident or established in a high-risk third country and not to all business relationships "involving" a high-risk third country.
  - Occasional transactions involving a high-risk third country are those received from or sent to a high-risk third country.
  - Banks are barely in a position to identify the origin of funds generated
  - Applying EDD to all funds received or sent to a high-risk country would induce a considerable workload and could lead to financial exclusion. Such a requirement would only be feasible in practice if banks were allowed to introduce thresholds.

"~~A business relationship or~~ An occasional transaction always involves a high-risk third country if
a) ~~the funds were generated in a high-risk third country;~~
b) the funds are received from a high risk third country;
c) the destination of funds is a high risk third country;
In such situations, EDD is required above certain thresholds to be defined by the firm on a risk-based basis.

"A business relationship ~~or transaction~~ always involves a high-risk third country if:
- *the firm is dealing with a natural person or legal entity as its customer resident or established in a high risk third country;"*
- *the firm is dealing with a trustee as its customer established in a high-risk third country or with a trust governed under the law of a high-risk country"*

- 4.56. It may be difficult to know where the transaction passes through and there is no regulatory obligation to perform such diligence. Moreover, we do not understand the example of payment service provider that plays a limited role in the payment. Consequently we suggest deleting guideline a).
  The fact that a beneficial owner is established in a high-risk third country does not trigger EDD in any cases and we note that AMLD5 does not require collecting the address of the beneficial owner.

"When performing CDD measures or during the course of a business relationship, firms should ensure that they also apply the EDD measures set out in Article 18 a(1) and, where applicable, the measures set out in Article 18 a(2) of Directive (EU) 2015/849, where firms determine that
~~a) the transaction passes through a high-risk third country, for example because of where the intermediary payment services provider is based; or~~
~~b) a customer's beneficial owner is established in a high-risk third country"~~

- 4.57. Firms cannot commit themselves identifying close personal links of a client or a beneficial owner with a high-risk country when assessing the risk associated with the business relationship. No official lists exists and this is almost impossible. We also do not consider that personal or professional links with a high-risk country should, in themselves, trigger EDD. We suggest deleting this guideline.

  ~~"Notwithstanding guidelines 4.54 and 4.56 firms should carefully assess the risk associated with business relationships and transactions where~~
  ~~a) the customer maintains close personal or professional links with a high risk third country; or~~
  ~~b) the beneficial owner(s) maintain(s) close personal or professional links with a high risk third country.~~

EDD: other high-risk situations

- 4.64. We consider that information about family members and close business partners should remain limited to the cases where the family member or the business partner is a PEP. It would be difficult to define on which family member or business partner the investigations should be performed and to obtain the information should this person not be a PEP. We suggest deleting this guideline as this check is always performed when we are speaking of PEPs.

  "EDD measures firms should apply may include increasing the quantity of information obtained for CDD purposes: i. *Information about the customer's or beneficial owner's identity, or the customer's ownership and control structure, to be satisfied that the risk associated with the relationship is well understood. This may include obtaining and assessing information about the customer's or beneficial owner's reputation and assessing any negative allegations against the customer or beneficial owner. Examples include:*
  ~~a. information about family members and close business partners for customers or beneficial owners;~~

Transaction monitoring

- 4.74. The quality of a transaction monitoring framework can be enhanced through:
  - Information gathered from various FIUs, from the FATF, Europol…. that allow learning about the new typologies of ML/TF identified and help to define new scenarios or amending existing ones.
  - Regular tests on alerts generated and external triggers allowing the fine-tuning of the scenarios in place.

  We do not see how tests on processed transactions could allow the identification of new trends and the enhancement of the reliability and appropriateness of the transaction monitoring system. Finally, samples should not necessarily be random.

  In addition to real time and ex-post monitoring of individual transactions, and irrespective of the level of automation used, firms should regularly perform ex-post reviews on a ~~random~~ sample taken from external triggers and alerts generated ~~all processed transactions to identify trends that could inform their risk assessments~~, ~~and~~ to test the reliability and appropriateness of their transaction monitoring system.

Question 5: Do you have any comments on the amendments to Guidelines 5 on record keeping

No comment

Question 6: Do you have any comments on Guideline 6 on training

No comment

Question 7: Do you have any comments on the amendments to Guideline 7 on reviewing effectiveness?

- 7.2. While we agree that the effectiveness of firms' approach to AML/CFT should be regularly assessed, we do not see on which basis an independent review of their approach should be warranted or required. We kindly ask the EBA for clarification or deletion of this guideline.

  ~~*Firms should consider whether an independent review of their approach may be warranted or required.*~~

Question 8: Do you have any comments on the proposed amendments to Guideline 8 for correspondent banks?

As for Guideline 8 we would like to underline that in our opinion correspondent banks should not have to assess the implementation of policies and procedures nor to perform on-site visits and sample-testing.

Respondents based in non-EEA countries

- 8.8 – b) Clarification is needed on what is meant by "significant business".

  "The following factors may contribute to increasing risk: b) the respondent conducts significant business with customers based in a jurisdiction associated with higher ML/TF risk.

- 8.17 - c): In line with the above comment, we ask for the deletion of the reference to sample testing and copy of the respondent's AML policies and procedures.

  "Article 19 of Directive (EU) 2015/849 requires correspondents to take risk-sensitive measures to: c) Assess the respondent institution's AML/CFT controls. This implies that the correspondent should carry out a qualitative assessment of the respondent's AML/CFT control framework~~, not just obtain a copy of the respondent's AML policies and procedures~~. This assessment should be documented appropriately.~~ In line with the risk-based approach, where the risk is especially high and in particular where the volume of correspondent banking transactions is substantive, the correspondent should consider on-site visits and/or sample testing to be satisfied that the respondent's AML policies and procedures are implemented effectively. (2017/New)~~

- 8.17 - d): Without a clear definition of who should be a senior manager, implementation rules will differ from one country to another and maybe from one firm to another. We agree that the

manager who should give his/her approval can hold several positions according to the size and organisation of the firm; however, clearer guidelines would be welcome. On this specific point, we suggest adopting the rule from the French regulation which states that the opening of a relationship with a correspondent bank in a non-EEA country should be approved by a member of the executive body or by any person empowered to do so by the executive body (empowerment can also be given to the position).

"Obtain approval from senior management, as defined in Article 3(12) of Directive (EU) 2015/849 before establishing new correspondent relationships and where material new risks emerge, such as because the country in which the respondent is based is designated as high risk under provisions in Article 9 of Directive (EU) 2015/849. The approving senior manager should not be the officer sponsoring the relationship and should be a member of the executive body or have been empowered by the executive body ~~the higher the risk associated with the relationship, the more senior the approving senior manager should be~~. Correspondents should keep senior management informed of high-risk correspondent banking relationships and the steps the correspondent takes to manage that risk effectively."

- 8.17 – e - iii) Article 19 d of AMLD5 states that credit and financial institutions shall document the respective responsibilities of each institution when entering into a business relationship with a third country respondent institution. It does not however go into detail on the information to be documented. There is no regulation that requests banks to describe to their clients how they monitor their transactions and we consider that such information should remain confidential as it could be used to bypass the controls put in place. Clarification is needed to understand what is effectively requested.

  If not already specified in its standard agreement, the correspondents should conclude a written agreement including at least the following: iii) how the correspondent will monitor the relationship to ascertain the respondent complies with its responsibilities under this agreement ~~(for example through ex post transaction monitoring);~~

Respondents established in high-risk third countries, and correspondent relationships involving high-risk third countries

8.20 - 8.21. Generally speaking, we consider that firms should not be required to identify professional or personal links with certain countries as part of standard CDD measures. Such diligences can only be performed on an exceptional basis as part of an enhanced assessment of a high-risk relationship. Including such a requirement in standard CDD measures would generate a considerable workload and could result in de-risking decisions. Moreover, we do not know what a "significant proportion" could be, how to assess it and how firms are supposed to collect the information. More clarification is needed: either we should rely on the answer of the respondent to the question asked during the due diligence process (with clarification on the term "significant") or this guideline should be deleted.

~~*"Correspondents should also, as part of their standard CDD EDD measures, determine the likelihood of the respondent initiating transactions involving high-risk third countries, including because a significant proportion of the respondent's own customers maintain relevant professional or personal links to high-risk third countries".*~~

- 8.23. Our understanding is that Guideline 8.23 requests application the specific EDD requirements for high-risk third countries in parallel with those for correspondent relationships. If our understanding is correct, then we do not think this is the right approach and consider that firms may still choose to establish a correspondent banking relationship with a respondent situated in a high-risk third country by mitigating this risk through their EDD correspondent banking measures and/or through supplementary risk-based EDD measures. This is the case for instance if the correspondent relationship is established with a branch or subsidiary of a firm based in an EEA-country. Further guidance would be welcome.

  "unless the correspondent has assessed ML/TF risk arising from the relationship with the respondent as particularly high correspondents should be able to comply with the requirements in Article 18a(1) by applying Article 13 and 19 of Directive (EU) 2015/849.'

- 8.24. According to EU legislation, the determination of source of wealth and/or source of funds is required for certain type of customers only. In any case, it does not apply to customers of customers. Moreover, as highlighted for guideline 8.17, we consider that correspondents do not have to perform on-site visits with sample checks to assess the correct implementation of policies and procedures. Such assessment should only be done upon the respondent's answer to the due diligence questionnaire. We suggest deleting this guideline.

  ~~*"To discharge their obligation under Article 18a (1)(c) of Directive (EU)2015/849, correspondents should apply guideline 8.17(c) c) and take care to assess the adequacy of the respondent's policies and procedures to establish their customers' source of funds and source of wealth* for high-risk relationships *and carrying out onsite visits or sample checks, or asking the respondent to provide evidence of the legitimate"*~~

- 8.25 - b) Same comment as for guidelines 8.17c. for on-site visits (either by the correspondent bank or by a third party). We also consider that banks should not have to commission third party review on a respondent bank. The assessment of the AML/CFT framework is performed by the third line of defence (internal audit) and by the supervisor. Adding another layer would create more burden on the teams.

  "Where Members States require firms to apply additional measures in line with article 18a) (2) correspondents should apply one or more of the following: b) Requiring a more in-depth assessment of the respondent´s AML/CFT controls. In these higher risk situations, correspondents should consider ~~*reviewing the independent audit report of the respondent's AML/CFT controls,*~~ *interviewing the compliance officers,* ~~*commissioning a third party review*~~ *or conducting an onsite visit."*

Question 9: Do you have any comments on the proposed amendments to Guideline 9 for retail banks?

Customer due diligence

- 9.13 - b) We do not understand on which legal basis, firms should have to identify and verify the identity of shareholders other than the beneficial owners of the customer. We kindly suggest amending or clarifying.

"Where the risk associated with a business relationship or occasional transaction is increased, banks must apply EDD measures. They may include: identifying and verifying the identity of ~~other shareholders who are not the customer's beneficial owner or~~ any natural person who has authority to operate an account or give instructions concerning the transfer of funds or the transfer of securities."

Pooled accounts

- 9.16. The requirement to verify the identity of the customer's clients as the beneficial owners of the funds held in a pool account is not feasible. There are often several hundred or thousands of constantly changing beneficial owners in the case of PSPs. No provision from AMLD5 nor recommendation of the FATF asks for KYC of clients of clients. We suggest deleting this guideline or giving clarity.

  ~~*"Where a bank's customer opens a 'pooled account' in order to administer funds that belong to the customer's own clients, the bank should apply full CDD measures, including treating the customer's clients as the beneficial owners of funds held in the pooled account and verifying their identities."*~~

Customers that offer services related to virtual currencies

- 9.21. It would be very useful to obtain clarification on due diligences expected to be performed in order to assess risks linked to customers that provide services related to virtual currencies. We would like to have guidelines on the scope of these due diligences to avoid discrepancies among national regulations. These guidelines should cover as a minimum controls in place to:
  - check the origin of the funds,
  - ensure compliance with transparency requirements and asset freeze regulation,
  - ensure that a virtual currency owner cannot use his public/private key with a non-regulated provider.

  We would also appreciate having more guidelines on the scope of the monitoring to be performed by retail banks and especially on the origin of the funds (are retail banks expected to control operations performed on the blockchain?)

  "When entering into a business relationship with customers that provide services related to virtual currencies, firms should, as part of their ML/TF risk assessment of the customer, consider the ML/TF risk associated with virtual currencies"

- 9.22 - e). ICOs are not limited to virtual currencies but include also security tokens for which specific due diligence has to be performed. They are also not limited to retail banking. For these reasons we suggest deleting this guideline and creating two new guidelines on security tokens and on ICOs.

  ~~*"Firms should consider among others the following as virtual currency businesses: Arranging, advising or benefiting from 'initial coin offerings' (ICOs). "*~~

- 9.23. For relationships with regulated customers, banks should be authorised to apply simplified due diligence measures. We suggest considering this possibility in guideline 9.23.

"To ensure that the level of ML/TF risk associated with such customers is mitigated, banks should not apply simplified due diligence measures for relationships when the customer that offers services related to virtual currencies is unregulated."

Question 10: Do you have any comments on the proposed amendments to Guidelines 10 for electronic money issuers?

Distribution channel risk factors

- Guideline 10.9. refers to distribution agreements with merchants or on line merchants. We suggest considering also the use of crowdfunding platforms.

  "Firms should, prior to signing a distribution agreement with a merchant, understand the nature and purpose of the merchant's business to satisfy themselves that the goods and services provided are legitimate and to assess the ML/TF risk associated with the merchant's business. In case of an online merchant, or a crowdfunding platform, firms should also take steps to understand the type of customers this merchant attracts, and establish the expected volume and size of transactions in order to spot suspicious or unusual transactions."

Question 11: Do you have any comments on the proposed amendments to Guidelines 11 for money remitters?

Products, service and transaction risk factors

- 11.5: Among the various factors that can contribute to increasing risk, we suggest adding the situation where the transaction is funded with a virtual currency.

  "the transaction is cash-based or funded with anonymous electronic money, including electronic money benefiting from the exemption under Article 12 of Directive (EU) 2015/849 or a virtual currency; "

Question 12: Do you have any comments on the proposed amendments to Guideline 12 for wealth management?

No comment

Question 13: Do you have comments on the proposed amendments to Guidelines 13 for trade finance providers?

Our comments are the following:

Transaction risk factors

- Guideline 13.10 - d) talks about checking quality and quantity of goods, and the agreed value of goods. We would like to point out that banks do not inspect the actual goods and suggest deleting this part of the sentence.

  "There are significant discrepancies in documentation, for example between the description of the type, quantity or quality of goods in key documents (i.e. invoices, insurance and transport documents) ~~and actual goods shipped, to the extent that this is known.~~"

- Guideline 13.10 - g): We would also like to point out that banks are not in a position to determine over and under insurance. We suggest deleting this guideline.

  ~~*"The agreed value of goods or shipment is over- or under-insured or multiple insurances are used.*~~

- 13.10 - h): Dual-use items are very numerous and cannot be considered in themselves as an AML red-flag. They should be analysed in the context of a sensitive final use and final user.

  " In the context of a sensitive final use or final user, the goods transacted require export licenses, such as specific export authorizations for dual-use items".

Country or geographical risk factors

- Guideline 13.14 - b): We suggest adding the fact that a country is listed as a non-cooperative jurisdiction for tax purpose, as a factor that may contribute to increasing risk.

  "A country associated with the transaction has higher levels of predicate offences (e.g. those related to the narcotics trade, smuggling or counterfeiting) or free trade zones or is a non-cooperative jurisdiction for tax purpose."

Question 14: Do you have any comments on the proposed amendments to Guideline 14 for life insurance undertakings?

No comment

Question 15: Do you have any comments on the proposed amendments to Guideline 15 for investment firms?

No comment

Question 16: Do you have any comments on the proposed amendments to Guideline 16 for providers of investment funds and the definition of customer in this Guideline?

Guideline 16.13 states that the measures funds or fund managers should take to comply with their CDD obligations will depend on how the customer or the investor comes to the fund. We note, however that in some guidelines there is some confusion as to whom the CDD measures should apply, especially in guidelines 16.13 and 16.20.

Question 17: Do you have any comments on the additional sector-specific Guideline 17 on crowdfunding platforms?

No comment

Question 18: Do you have any comments on the additional sector-specific Guideline 18 on account information and payment initiation service providers?

We welcome the drafting of this sectorial guideline for PISPs and AISPs that will be a helpful support for assessing the AML/CFT frameworks implemented. We do however have two comments:

- As stressed in guideline 18.2, AISPs are not involved in the payment chain and do not hold payment service users' funds. The AML/CFT risk is consequently null and an AISP has no possibility of monitoring transactions (or it would be very inefficient and partial and would duplicate the diligences performed by the account servicing payment service provider of the client). Consequently we propose making clear that no particular AML/CFT obligations applies to AISPs.

- As regards PISPs, we agree with the guideline but suggest applying a risk-based approach and allowing simplified due diligence in the case of a PISP service provided to a customer (but not in the case of merchants that provides e-commerce facilities).

Question 19: Do you have any comments on the additional sector-specific Guideline 19 on currency exchanges?

No comment

Question 20: Do you have any comments on the additional sector-specific Guideline 20 on corporate finance?

As a general comment, we note that firms are required to assess the integrity of directors, shareholders and other parties with significant involvement in the customer's business and the corporate finance transaction and to identify the country where beneficial owners are based. Such information is not part of the on-boarding process and it would entail a very cumbersome process to obtain it.

We also suggest indicating from the outset that the activities encompassed in corporate finance are M&A and securities issuance. We would like also to emphasize that clients are not only corporates but also sometimes institutionals (e.g. state funds), and more rarely individuals. Investors in securities' issuance should also be taken into account. We suggest amending paragraph 20.1 accordingly.

Other comments are the following:

Customer and beneficiary risk factors

- 20.3 - a) Securitisation special purpose entities are not by themselves a trigger for an ML/FT risk. We suggest amending the guideline as follows:

  "Where offering corporate finance services, firms should take into account the following risk factors as potentially contributing to increased risk: a) the ownership of the customer is opaque with no reasonable business reason: for example, where ownership or control is vested in other entities such as trusts or a Securitisation special purpose entity (SSPE)";

- 20.3 - c) We do not see the ML/FT risk linked with the fact that the customer would have not received a mandate or a sufficiently senior management approval to conclude the contract. We suggest deleting this guideline.

  "~~where there is no evidence the customer has received a mandate or a sufficiently senior management approval to conclude the contract~~";

Country and geographical risk factors

- 20.5. Firms are not obliged to identify the address of the beneficial owner and the wording associated with jurisdiction associated with higher ML/TF risk is unclear. This could trigger a heavy operational constraint. We suggest the following wording:

  "Where offering corporate finance services, firms should take into account the following risk factors as potentially contributing to increased risk: a) the customer ~~or their beneficial owner~~ is based in, ~~or associated with~~ a jurisdiction associated with higher ML/TF risk. Firms should pay particular attention to jurisdiction with high level of corruption."

Enhanced customer due diligence

- 20.7. Identification of beneficial owners and their links with PEPs is part of the standard CDD and not an EDD, and paragraph a) appears to be redundant with the previous paragraph, therefore we suggest deleting this part of the sentence:

  "Where the risk associated with a business relationship or an occasional transaction is increased, firms should apply ~~EDD measures such as beneficial ownership, and in particular any links the customer might have with politically exposed persons, and the extent to which these links affect the ML/TF risk associated with the business relationship";~~

- 20.7 - a) It is not clear which additional checks on customers' ownerships are expected from firms and the expression "any links the customer might have with PEPs" is unclear.
  We ask the EBA for clarification on these two points.

- 20.7 - b) It might be very difficult to assess the integrity of directors, shareholders and other parties. Moreover, due diligence on directors is not requested by AMLD5. We suggest deleting the guideline.

  ~~"Assessments of the integrity of directors, shareholders, and other parties with significant involvement in the customer's business and the corporate finance transaction";~~

- 20.7 - c) The definition of "other owners or controllers" is unclear. This verification is not requested by AMLD5 or FATF and would induce a considerable workload. We suggest deleting this guideline.

  ~~"Verification of the identity of other owners or controllers of a corporate entity";~~

- 20.7 - e) Establishing the financial situation of a client should be part of the regular CDD and not limited to ECDD. We suggest deleting this guideline.

  ~~Establishing the financial situation of the corporate client;~~

- 20.7 - g) On this guideline we would like to have more details on the checks to be performed, it being clear that these counterparties are not clients (point iv refers to "future customers)"

  Risk-sensitive customer due diligence checks on other parties to a financial arrangement to gain sufficient background knowledge to understand the nature of the transaction. This is because

money laundering risks may be posed to the firm not only by its customers, but also by parties to transactions with whom the firm does not have a direct business relationship…