



Circular CSSF 23/842

Adoption of the revised guidelines, by the EBA, on money laundering and terrorist financing risk factors – complement of Circular CSSF 21/782

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This circular shall apply to credit and financial institutions as defined in Article 1(3) and (3a) of Title I of Chapter 1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

Luxembourg, 16 October 2023

Ladies and Gentlemen,

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the European Banking Authority (“EBA”) **guidelines amending** (ref. EBA/GL/2023/03) (“amending Guidelines”) the EBA Guidelines on customer due diligence and the factors credit and financial institutions (“professionals”) should consider when assessing the money laundering and terrorist financing (“ML/TF”) risks associated with individual business relationships and occasional transactions (“Guidelines on ML/TF risk factors”) under Articles 17 and 18(4) of Directive (EU) 2015/849 (EBA/GL/2021/02), published on 31 March 2023. Consequently, the CSSF has integrated the amending Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level.

1. The Guidelines

Indeed, following the publication, in January 2022, of an Opinion of the EBA on “de-risking”¹, which assessed the scale of de-risking in the EU, and the impact of the professionals’ decisions to refuse to enter into or to terminate business relationships with individual customers or categories of customers associated with higher ML/TF risks, among which **not-for-profit organisations (NPOs)**, and the European Commission’s request to the EBA to issue new guidelines on the steps institutions should take to facilitate access to financial services by NPOs, the EBA prepared dedicated amending guidelines (EBA/GL/2023/03) regarding customers that are NPOs. These have now been added as an **annex** to the Guidelines on ML/TF risk factors and are referred to under Guideline 2 (Identifying ML/TF risk factors – Customer risk factors), **paragraph 2.7.(d)** of the main body of the Guidelines on ML/TF risk factors, as amended.

The purpose of the annex is to support the professionals in their understanding of the specificities of prospective or existing customers that are NPOs. Thus, they clarify the steps that the professionals should undertake to get a good understanding of how an individual NPO is set up and operates and what factors the professionals should consider when assessing the ML/TF risk associated with a business relationship with customers that are NPOs.

¹ [Opinion of the European Banking Authority on ‘de-risking’ – CSSF](#)

The Guidelines are annexed to this circular and are also available on the EBA's website at:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2023/1054143/Amending%20GLs%20to%20the%20RFGs%20in%20relation%20to%20NPOs.pdf

The consolidated version of the Guidelines on ML/TF risk factors (EBA/GL/2021/02), as amended, is available on the EBA's website at:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2023/EBA-GL-2023-03/1061654/Guidelines%20ML%20TF%20Risk%20Factors_consolidated.pdf

This circular complements Circular CSSF 21/782.

2. Scope of application

This circular shall apply to credit and financial institutions as defined in Article 1(3) and (3a) of Title I of Chapter 1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

3. Date of application

The Guidelines introducing the annex are applicable as of 3 November 2023.

Claude WAMPACH
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Annex EBA/GL/2023/03 – 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

EBA/GL/2023/03

31 March 2023

Final Report

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

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1. Executive summary

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.¹ This Opinion identified the main drivers of de-risking and the negative impact unwarranted de-risking can have on customers, including not-for-profit organisations (NPOs). 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, in particular NPOs.

These guidelines amend the Guidelines on ML/TF risk factors (EBA/GL/2021/02) and consist of 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.

Through these guidelines, the EBA fosters a common understanding by institutions and AML/CFT supervisors of effective ML/TF risk management practices and contribute to mitigate the adverse impact of de-risking on human relief efforts.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply three months after publication in all EU official languages.

¹ EBA/Op/2022/01

2. Background and rationale

.2.1 Background

1. In January 2022, the EBA published an Opinion on de-risking.² 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) risks. The EBA found that, across the EU, de-risking affected a variety of customers or potential customers of institutions, including not-for-profit organisations (NPOs). 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 NPOs.³ This coincided with the outbreak of the war in Ukraine, which further demonstrated the adverse impact of de-risking on humanitarian relief.
3. To respond to the Commission's request, the EBA prepared a dedicated annex on customers that are NPOs, which will be added to the Guidelines on ML/TF risk factors (EBA/GL/2021/02).
4. The EBA consulted the public on a version of these guidelines between 6 December 2022 and 6 February 2023. It received 25 responses.

.2.2 Rationale

5. The EBA is aware of reports that NPOs have faced difficulties in accessing financial services. These difficulties can lead to delays in programme 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 customer due diligence (CDD) information.
6. To address these issues, the EBA proposes to add an annex to the Guidelines on risk factors. 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

² [EBA/Op/2022/01](#)

³ [ARES\(2022\)1932799](#)



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 that are NPOs.



3. Guidelines

EBA/GL/2023/03

31 March 2023

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

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁴. 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/2023/03'. 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).

⁴ 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

Definitions

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

Not-for-profit organisations A not-for-profit organisation is a legal person or arrangement or an organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes.

3. Implementation

Date of application

6. These guidelines will apply three months after publication in all EU official languages.

4. Guideline on customers that are NPOs

Guideline 2. 7(d) is replaced by the following:

2.7.(d) Where the customer is a not-for-profit organisation (NPO), the firms should apply the criteria set out in the annex.

The following annex is added:

Annex: Customers that are NPOs

1. When assessing the risk profile of a customer or prospective customer that 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, its governing body and any other individual who has control or influence over the NPO. For this purpose, firms should refer to information such as 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 donations, 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 such as the customer's mission statement, a list of its programmes and associated budgets, activities, and services delivered.
- d) which categories of beneficiaries benefit from the customer's activities (for example, refugees, legal entities that receive assistance through the services of the NPO or similar). 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 such as organisational charts, explanations of the organisational structure of the NPO, a list of jurisdictions where the staff is paid and the number of employees to be paid in each of them.
- 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 in high-risk third countries. For this purpose, firms should refer to information such as a list of all programmes, activities and services delivered by the NPO, as well as a list of geographical locations served, including its 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

2. When identifying the risk associated with customers that are NPOs, firms should consider at least the following risk factors and assess them on a risk-sensitive basis:

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 identifies 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 reputation 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 misconduct or criminal activities, 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 risks 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 risks (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 it 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?



3. 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 categories of beneficiaries of its programmes.
- c) The NPO can demonstrate it is or has been subject to independent reviews or external audits.
- 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 that are not associated with high-risk third countries or with jurisdictions with higher ML/TF risks, and the source of its funds can be clearly established.
- f) The NPO does not have any links with high-risk third countries, or if it has, the NPO 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 categories of 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.

4. 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.

5. 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.

4. Accompanying documents

.4.1 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 must 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 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’ or ‘The Draft Guidelines’).

The IA is at a high level and qualitative in nature.

A. Problem identification and background

In January 2022, the EBA published an Opinion on de-risking in which it assessed the scale and impact of de-risking in the EU⁵. De-risking in this context refers to decisions by credit and financial institutions to refuse to enter into or decisions to terminate business relationships with individual customers or categories of customers associated with higher money laundering and terrorist financing (ML/TF) risks. 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 to ask the EBA in a letter dated March 2022 to issue guidelines to ‘broaden the scope of such guidelines beyond the interaction of AML and Payment Accounts Directive (PAD) requirements, such as the de-risking related to the non-profit sector’. The Draft Guidelines are related to the non-profit sector.

Following the Commission’s request, the EBA assessed existing EBA guidance, in particular its ML/TF RFGLs, which 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 recognised that several aspects would indeed benefit from further regulatory clarifications, as it pointed out in its Opinion on de-risking. In particular, the EBA assessed that one area in which new guidance would be necessary is the area related to NPO customers. That is because NPOs,

⁵ Opinion of the European Banking Authority on ‘de-risking’, EBA/Op/2022/01.



which are legal entities, are not covered by the rights provided by Directive 2014/92/EU (the Payment Accounts Directive).

As such, following this gap analysis and to respond to the Commission's request without duplicating existing provisions, the EBA, having consulted with the competent authorities that are responsible for the AML/CFT supervision of financial institutions, is proposing to add an annex to the ML/TF RFGLs, focusing on customers that are NPOs ('The draft Guidelines amending the RFGLs').

B. Policy objectives

The draft Guidelines amending the RFGLs aim to support credit and financial institutions in their understanding of the specificities of prospective or existing customers that are NPOs and in their assessment of the ML/TF risks associated with such customers.

The draft guidelines amending the RFGLs, 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 key to ensuring 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 in order to avoid delays in transfers of funds, for instance.

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 amending the RFGLs. The 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 outlined.

Add a specific section for NPO

The difficulties faced by NPOs in accessing financial services have been highlighted by several international reports.⁶

These difficulties were also reported to the EBA during the series of information gathering exercises that it conducted in 2020-2021, in which NPOs raised the fact that they experienced obstacles to accessing financial services, such as the being unable to open bank account or facing extensive delays in cash transfers in certain high-risk jurisdictions. NPOs also indicated to the EBA that the reason for 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

⁶ 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



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 1a: Adding a section in the RFGLs to guide institutions on conducting their due diligence of customers that are NPOs.

Option 1b: Not adding a section in the RFGLs to guide institutions on conducting their due diligence of customers that are NPOs.

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

In view of these challenges, which 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. This includes the delivery of humanitarian aid in the context of war or natural disasters, as well as medical assistance and the provision of basic services to populations in need. While international reports highlight the fact 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 materialise varies greatly across NPOs. ML/TF risks associated with customers that are NPOs must therefore 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 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 costs in terms of resources and training, would facilitate and speed up this process and thus decrease related costs in the long term.

Finally, costs will be exceeded by the reputational gain for the financial sector from serving a sector that is not for profit and whose aim is to provide support to populations in need. This will compensate for the often low level of financial income resulting from NPO relationships.

For all these reasons, **Option 1a has been chosen as the preferred option.**



D. Conclusion

The development of the Draft Guidelines amending the RFGLs is necessary to provide specific support to institutions for the due diligence of NPOs, which often have a very complex structure and business model. These new guidelines will improve the due diligence process required at the onboarding stage and in the course of the business relationship, and ultimately will help to improve the social impact of credit and financial institutions. The costs associated with more granular, tailored customer due diligence policies and procedures will be more than offset by the aforementioned benefits. Hence, these new guidelines should achieve their objective of providing better and fairer access to financial services with acceptable costs.

.4.2 Feedback on the public consultation

The EBA consulted the public on the draft proposal contained in this paper. The consultation period lasted for two months and ended on 6 February 2023. 24 responses were received, of which 20 were published on the EBA website. Respondents came from various backgrounds: credit and financial institutions, representatives of NPOs and representatives of NPO umbrella organisations.

Several industry bodies made similar comments, or the same body repeated its comments in response to different questions. In such cases, the comments and the EBA analysis are included in the feedback table where the EBA considers appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation. The amendments mainly clarify that:

- information should be provided in relation to categories of beneficiaries, not the beneficiaries themselves
- when identifying the risk associated with customers that are NPOs, firms should do this on a risk-sensitive basis
- where an NPO receives funds from government, supranational or international organisations that are not linked with high-risk third countries or jurisdictions associated with higher ML/TF risks, this may be considered as a factor that reduces ML/TF risk

Some amendments have also been made to improve alignment with the EBA's Guidelines on ML/TF risk factors.

The following table presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments, and the actions taken to address them if deemed necessary.

Summary of responses to the consultation and the EBA’s analysis

Amendments to the GLs on ML/TF risk factors: Do you have any comments regarding the proposed annex on NPOs as part of the GLs on ML/TF risk factors?			
Guideline	Summary of responses received	EBA analysis	Amendments to the proposal
General comment	A respondent recommended that the EBA could consider adding a legal entity identifier as a full requirement for customer due diligence.	Given that Directive (EU) 2015/849 (AMLD) does not contain the requirement for firms to obtain legal entity identifiers (LEIs), the EBA does not require their usage in these Guidelines either.	<i>None</i>
General comment	Several respondents recommended that the EBA should add an extra section to the annex addressed to national competent authorities (NCAs) about communication with NPOs.	These guidelines are primarily addressed to firms. Competent authorities should use these guidelines when assessing the adequacy of firms’ risk assessments and AML/CFT policies and procedures. The EBA has already covered CAs’ engagement with the NPO sector and its interaction with firms, in particular as part of the report on de-risking that it published in January 2022.	<i>None</i>
General comment	One respondent said that it is unlikely that NPOs take out life insurance policies for investment purposes. The respondent is therefore of the view that due diligence measures as described in the annex would not be proportionate.	These guidelines should be applied on a risk-sensitive basis. This means that in lower-risk situations, firms can apply simplified due diligence (SDD) measures in line with the general provisions and sectoral guidance in these guidelines.	<i>None</i>
General comment	One respondent claimed that the due diligence process required at the onboarding stage of NPOs was unreasonable and in conflict with Article 16 EU Charter of Fundamental Rights, which recognises the freedom to conduct a business.	Due diligence is a requirement of the AMLD, and Article 11 requires entities subject to the directive to apply customer due diligence measures when establishing a business relationship, including with NPOs.	<i>None</i>
Definitions	One respondent asked the EBA to clarify the difference between NPOs and NGOs.	The EBA has aligned its definition of NPOs with the one used by the FATF.	<i>None</i>

Amendments to the GLs on ML/TF risk factors: Do you have any comments regarding the proposed annex on NPOs as part of the GLs on ML/TF risk factors?			
Paragraph 9	Several respondents noted that not all information and documentation listed in the paragraph is necessary in all cases and that the need to obtain them in line with a risk-based approach should be recognised. A suggestion was therefore to change ‘should refer’ mentioned in 9a) to f) into ‘may refer’.	Paragraph 9 is already clear that ‘not all NPOs are exposed in a similar way to ML/TF risk’ and that firms should take ‘risk-sensitive measures’ to understand the NPO’s governance, how it is funded, its activities, where it operates, and who its beneficiaries are.	None
Paragraph 9	Several respondents said that the types of information about the beneficiaries that can be requested by credit and financial institutions should be clarified. It was indicated that humanitarian organisations cannot share the list of individual beneficiaries with banks as they operate in accordance with International Humanitarian Law, which states that they must provide assistance based on people’s needs alone, without distinction. Similar concerns were raised in relation to NPOs’ staff, as the required list of staff may endanger these persons if they are based in conflict zones for instance. The respondents also felt that sharing such details with banks would raise data protection concerns.	<p>The EBA agrees with the comments and has amended the guidelines as follows:</p> <p><i>[paragraph 1.d. of the final version] which categories of beneficiaries benefit from the customer’s activities (e.g. refugees, legal entities that receive assistance through the services of the NPO or similar) who the beneficiaries of the customer’s activities are. Documentation gathered for this purpose may include mission statements or campaign-related documents.</i></p> <p><i>1.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 such as organisational charts, explanations of the organisational structure of the NPO, a list of jurisdictions where the staff is paid and the number of employees to be paid in each of them. staff and beneficiaries for each of its activities.</i></p> <p>The new drafting also alleviates concerns over data protection issues.</p>	Amendment of Paragraph 1.d. and 1.e.
Paragraph 10	Several respondents were of the view that the risk factors listed in paragraph 10 do not need to be considered in all cases. For instance, to establish the risk profile of newly established or small NPOs, there may not be a need to assess their reputation and obtain evidence of their management capability or annual reports/financial statements. A suggestion was to redraft the start of paragraph 10 as follows: ‘The	<p>The EBA is of the view that the risk factors listed in this paragraph are all relevant to establish a risk profile. However, the EBA agrees that the level of details to identify each of the risk factors should be determined following a risk-based approach. Therefore, to clarify this further, the EBA has amended the guidelines as follows:</p> <p><i>[Paragraph 2 of the final version] When identifying the risk associated with customers that are NPOs, firms should consider at least the following risk</i></p>	Amendment of paragraph 2

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	following risk factors may be relevant to consider when identifying the risk associated with clients that are NPOs.’	consider at least the following risk factors <i>factors and assess them on a risk-sensitive basis.</i>	
Paragraph 10 a., b. and c. (Governance and exertion of control)	<p>One respondent asked for a more precise and framed definition of ‘good reputation’.</p> <p>Another respondent was of the view that a lack of legal status should not be considered an increased risk for ML/TF, as within certain contexts registration may not be possible due to reasons such as a lack of state mechanisms to legalise NGOs, laws that ban the registration of NPOs, politically motivated restrictions on some NPOs and concerns about security. Less established yet credible NPOs may also have fewer resources to comply with the burdensome registration requirements.</p> <p>Several respondents suggested adding a section that recommends reviewing the due diligence and risk management procedures that NPOs have in place and considering the risk mitigants NPOs operating in higher-risk jurisdictions have put in place to reduce or manage risk.</p>	<p>Guideline 2.5. of the general section of the Guidelines on ML/TF risk factors, to which the Guidelines on NPOs are annexed, provides a list of risk factors that may be relevant when identifying the risk associated with a customer’s reputation.</p> <p>Regarding the second comment related to legal status, the EBA notes that it would be unlikely that a credit or financial institution would agree to serve an NPO without any legal status. NPOs are legal entities, and this status requires formalised set-ups in the EU.</p> <p>Regarding the third comment, the EBA is of the view that this aspect is covered in paragraph 11.f. of the guidelines, which specifies the factors that would decrease the risks associated with an NPO.</p>	<i>None</i>
Paragraph 10.e (Reputation/adverse media findings)	Several respondents were concerned that these paragraphs did not account for the fact that NPOs can be the target of smear campaigns, even by the governments of the jurisdictions in which they operate. In this context, the terms ‘relevant, reliable and independent’ may not be sufficiently clear and should be better contextualised.	Guidelines 1.29 to 1.32 of the general section of the Guidelines on ML/TF risk factors, to which the Guidelines on NPOs are annexed, provide examples of sources of information that can be used to identify ML/TF risk. The guidelines are clear that firms should refer to information from <u>a variety of sources</u> and should not normally rely on only one source to identify ML/TF risk. Potential sources include information from civil society, such as corruption indices and country reports, and information from credible and reliable open sources, such as reports in reputable newspapers.	<i>None</i>
Paragraph 10.f.	Several respondents were of the view that the focus of these guidelines should be on (predicate offences to) ML and TF.	To clarify this paragraph and to align it with the amendment introduced in paragraph 10.e., paragraph 10.f. is amended as follows:	<i>Amendment of paragraph 2.f.</i>

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(Reputation/adverse media findings)		[Paragraph 2.f. of the final version]: ... has the NPO been involved in misconduct or criminal activities , other crimes , including ML/TF-related activities, according to relevant, reliable and independent sources?	
Paragraph 10.g.,h.,i. (Funding methods)	In relation to crypto assets and crowdfunding referred to in 10.h., several respondents requested further clarification as to why this is different to the risk profiles of other customers receiving funds from similar sources.	The EBA is of the view that the transparency of NPOs' funding methods and sources of funds is a prerequisite to assessing ML/TF risks. In this context, funds obtained through crowdfunding or in the form of crypto assets carry specific risks, in particular in relation to the risks arising from the borderless situation and anonymity these allow. Sectoral Guideline 17 of the Guidelines on ML/TF risk factors has more details on this point. The Guidelines on ML/TF risk factors will also be amended to include a sectoral guideline for crypto assets service providers (CASPs).	None
Paragraph 10.k.	One respondent was of the view that the use of third parties or intermediaries is a standard approach in humanitarian work. Therefore this should not be viewed as a higher risk factor.	The guidelines recognise that third parties or intermediaries may be used by NPOs. The guidelines specify that in such situations, it is nevertheless expected that an NPO is able to explain the nature of contractual performance and how it can monitor it.	None
Paragraph 11 (Factors that decrease the ML/TF risks)	Several respondents recommended that sectoral self-regulation, which can include measures that help mitigate risk (including understanding of TF risk itself), should be recognised as a risk-decreasing factor. Another respondent also suggested that one category of NPOs that could be considered as presenting a low risk is the NPOs that engage in expressive activities and not in raising or disbursing funds.	The EBA recognises that representational and self-regulatory organisations can play a role in the protection of the sector against a range of abuses. However, as their set-ups and level of independence can vary across jurisdictions, the EBA does not consider they can be considered – on their own – as decreasing the risk of misuse by terrorist groups. As regards the second comment, the EBA notes that NPOs engaged in 'expressive activities' are not immune to ML/TF risks. Guideline 10.f. is clear that if an NPO can be linked to extremism, extremist propaganda or terrorist sympathies, this should be considered as a risk-increasing factor.	None
Paragraph 11.e.	Several respondents asked for further clarification to reflect the diversity of donors and suggested specifying that funding	The EBA has amended the paragraph as follows: 3.e. [of the final version] The NPO receives funds from government, supra-national or international organisations that are not associated with high-	Amendment of paragraph 3.e.

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	received from governments from high-risk third countries should not be considered as a risk-reducing factor.	risk third countries or with jurisdictions with higher ML/TF risks , and the source of funds can therefore be clearly established.	
Paragraph 11.f.	Other respondents have stated that NPOs should not be expected to screen their beneficiaries, as these would be contrary to humanitarian law.	To reflect this point and ensure consistency with the amendment in paragraph 10, the EBA has amended the paragraph as follows: 3.f. [of the final version] The NPO does not have any links with high-risk third countries, or if it has, the NPO 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 categories of beneficiaries and assess the ML/TF risks associated therewith).	<i>Amendment of paragraph 3.f.</i>
Paragraph 11.h.	A respondent said that humanitarian assistance is not limited to material support and that evidence has shown that cash assistance can be the most effective method to respond to some humanitarian needs. In the respondent's view, banks should understand that cash assistance can be the best method to respond to people's needs and they should consider the risk management and due diligence process that an organisation has in place when providing cash assistance.	The use of cash carries inherent risks and cannot be considered as a method presenting low ML/TF risks. While the EBA recognises that cash assistance is an important means to provide humanitarian assistance, it is also of the view – and in line with the FATF – that when cash is used, it should be done appropriately and in line with international and national laws and regulations, including cash declaration and/or cash disclosure requirements to promote greater transparency and accountability of the funds.	<i>None</i>
Paragraph 12 (Activities in jurisdictions subject to EU or UN sanctions)	Several respondents noted that this paragraph could say more about what kind of evidence a financial institution might be able to obtain, and how, to get assurance that an NPO is operating within the scope of an applicable exemption from the sanctions regime.	The EBA notes that there are no standardised types of evidence across the EU that can be requested from NPOs to demonstrate they benefit from any provisions related to humanitarian aid and derogations in EU/UN financial sanctions regimes, such as humanitarian exemptions or derogations. Regarding EU sanctions, the EBA notes that firms can refer to the factsheet issued by the European Commission outlining the most common rules and procedures in place in different Member States when assessing requests and granting humanitarian derogations under EU sanctions regulations. In addition, when sanctions are issued, for example by the EU or the UN, there are some areas of derogations that are published for the purpose of humanitarian interventions and that apply to all NPOs. These derogations are made public so that credit and financial institutions can also consult	<i>None</i>

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		them. The European Commission’s Directorate General for civil protection and humanitarian aid operations has further information on this point.	
Paragraph 13 (contact point for NPOs)	Some respondents recommended that the contact points referred to in paragraph 13 should receive training to gain adequate knowledge of NPOs’ structures and contexts.	Paragraph 9 of the guidelines already provides that 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. The EBA is of the view that it should be for firms to decide how best to ensure this.	<i>None</i>