European Banking Industry Committee

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European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

21st January 2016

EBIC response to public consultation on the draft Risk Factor Guidelines of the European Supervisory Authorities (ESAs)

Dear Madam, Dear Sir,

The European Banking Industry Committee (EBIC) would like to thank the European Supervisory Authorities (ESAs) for providing it with the valuable opportunity to comment on the consultative document (JC 2015 061) titled "The Risk Factor Guidelines" of 21 October 2015 during the public hearing on 15 December in London and via the public consultation.

General responses to the questions and comments

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

With regard to question a) of the consultative document, in the view of EBIC the draft guidelines appear to reflect the revised standards of the Financial Action Task Force (FATF) as well as the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4. AMLD) and contains guidelines on risk factors that consider to some extent the practices prevalent in the banking industry. Although EBIC commends the efforts of the ESAs to provide supervisory guidelines on good practices we have some concerns regarding the draft's impact on the risk based approach of firms, on proportionality and the efficiency of AML/CFT measures.

Risk-based approach

Some aspects of the said draft guidelines go beyond the scope of the requirements laid down in the 4. AMLD and in some cases obliged entities could not be able in practice to conduct the activities requested. For example many provisions pre-suppose that firms/obliged entities have positive knowledge on issues like customers reputation, adverse media reports, links of customers with high risk, abuse office for private gain etc. Although financial institutions may incidentally have knowledge on these issues resulting from their

monitoring and research it should not be expected by supervisors from the outset. Specific points where the text goes beyond level I legal requirements are listed further below.

Moreover, several provisions appear in contradiction with certain public authorities' expectations regarding recent developments in Europe. In particular EBIC sees a lack of clarity in the draft Guidelines on the expected risk prevention measures and demands to offer basic customer services associated in light of the current migration crisis (see comments on paragraphs 59 and 99 further below).

Proportionality

Furthermore, EBIC finds that the text does not take due consideration of the principle of proportionality by proposing requirements that would pose serious and – to some extent – indomitable challenges for the European banking industry as a whole and especially for small and medium sized banks (see for example comments on paragraph 20 below)

Efficiency

In terms of efficiency, EBIC finds that the draft does not sufficiently take into consideration the importance for obliged entities to have access to public information on risk factors such as registers of beneficial owners as required by the 4. AMLD and information on equivalent countries often mentioned in the Directive (see comments below on paragraph 23). The Guidelines should lay more stress on the public domain and sources of information to provide informational and legal certainty to firms/obliged entities. In this context we would welcome a paragraph that emphasizes that the processing of personal data for the purposes of the 4. AMLD is a matter of public interest as stated in Article 43 of the 4. AMLD and that under the conditions laid out in the Directive these provisions override data protection concerns (e.g. concerning the collection of data on the customer's reputation) as was also stated by the ESAs during the public hearing. Otherwise, the effective implementation of the guidelines could be hampered.

Predictability and Reliability

In the public hearing on the draft Guidelines on 15 December 2015 the ESAs stressed that the Guidelines shall give input for an effective mitigation of AML/CFT risks and that they should not lead to a "box-ticking-exercise". While the general line of this argument is to be welcomed financial institutions have to be able to have a high level of certainty that by complying with the guidelines they largely fulfill expectations of supervisory authorities as well as auditors which usually use such standards for their assessments. The risk indicators mentioned in the Guidelines represent a basis for the firms' system of preventative measures. Firms should be able to trust in this basis. Of course, risk indicators may develop and change over time and firms should take this into account. Further, they should be allowed to follow also other indicators if their business model rules out other indicators. However, if an obliged entity follows the risk indicators in the Guidelines as they stand, this should be an important indication for a sound risk based preventative system. If new risk

indicators appear, they should be evaluated and - if proven valid - been integrated into the Guidelines. Such a more flexible and adjustable form of Guidelines could improve the interaction between rules and implementation significantly and could help a lot to improve the overall translation of the risk based approach.
We would also like to insist on the need for the ESAs / national supervisory authorities to regularly update industry representatives on the state of play of the interpretation/implementation issues experienced by individual obliged entities of the guidelines in order to allow for a representative banking industry feedback. This is essential for a good engagement and dialogue between the industry as a whole and the supervisors as mentioned in paragraph 64 of the draft guidelines.

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

The drafts list a very high amount of possible risk factors presented as questions. From past experience one can say that the risk with such "examples" of risk factors is that they are often translated by national authorities and auditors as "hard risk indicators" which are then to be checked with each customer. In the public hearing the ESAs have clearly stated that these guidelines were not just guidance but clear supervisory standards and expectations that firms and obliged entities have to meet.
Therefore, it is crucial that the Guidelines contain a clear statement that implementation is a presumption for compliant behavior. This does not exclude implementation of other risk factors if addressees of the Guidelines believe this is appropriate.

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

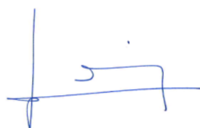
The proposed structure by types of business is clear enough, especially for a text that is not supposed to introduce new legal requirements (Level I). A legally driven classification would not necessarily provide more clarity. However, in addition to our comments under question b) we would like to insist on the fact that it should be more clearly stated along the text that firms/obliged entities may within a Risk Based Approach decide not to use all the risk factors provided in the Guidelines but individual sub-sets thereof specifically suited to their business models and risk profiles so that they do not fall into a "compliance risk gap".

Further comments

Finally, we would like to stress that following the recent terrorist attacks in Paris the EU has insisted on a rapid transposition of the 4.AMLD. In those Member States where the Directive is transposed before the formal deadline, 26 June 2017, firms/obliged entities should be able to have at their disposal the final set of the ESA's risk factor guidelines. We therefore urge the ESAs to quickly adopt a final text. However, wherever the guidelines goes beyond the provisions in the Directive it should be clearly stated that national authorities leave obliged entities enough time (at least two years) for implementation.
We would very much appreciate if the ESAs could consider our comments while finalizing the Risk Factors Guidelines. Should you require further information concerning the issues stated above please do not hesitate to contact us.

Please find our detailed comments below.

Yours sincerely,



Jean Naslin — Dr. Indranil Ganguli

EBIC Chairman — EBIC AML WG Chairman

Detailed comments:

EBIC would like to comment in detail in the following by referring directly to the numbered issues stated in the consultative documents.

Page 8, last paragraph reads: "*Competent authorities to whom the Joint Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where the Joint Guidelines are directed primarily at institutions*." It should be added that "*the Guidelines are regularly updated and take into consideration best practices by national competent authorities, especially regarding specialised credit institutions with low AML/CFT risks*"

Paragraph No. 18, Lit. b): The requirement for firms, when identifying the risk associated with their customers, including their customers' beneficial owners, to consider the risk related to "… the *customer's and the customer's beneficial owners' reputation* …" should be modified so as to include as an addendum the words "***if positive knowledge exists***" after the word "*reputation*".
The framework of the risk-based approach (RBA) of the 4. AMLD does not explicitly require firms to undertake proactive research in this respect.

Paragraph No. 19, First Bullet: It should be clarified that the enumeration of sectors associated with higher corruption risks provided by the draft guidelines are of an indicative and non-exhaustive nature. Therefore, the requirement for firms to consider whether "… *the customer or beneficial owner have links to sectors that are associated with higher corruption risk, such as construction, pharmaceuticals and healthcare, arms trade and defence, extractive industries and public procurement* …" should be modified by inserting the words "***publicly known to be***" between the words "*are*" and "*associated*".

Paragraph No. 19, Fifth Bullet: The proposal to extend the obligation for firms to examine the status of politically exposed persons (PEP-status) of the customer's directors goes beyond the legal scope of the 4. AMLD and eventually leads to the inflation of the group of persons that are to be examined concerning their PEP-status. This cannot be accepted especially in light of the fact that the draft guidelines are proposing these requirements within the framework of general risk assessment and not within the scope of enhanced due diligence (EDD) measures.

Paragraph No. 19, Sixth Bullet: The requirement for firms to consider whether "… *the customer or beneficial owner hold another public position that might enable them to abuse public office for private gain* …" is of speculative nature. It certainly does not constitute a piece of information which firms/obliged entities are required to collect within the framework of their basic customer due diligence (CDD) obligations and the Know-Your-Customer (KYC) principle stated in the 4. AMLD. Therefore, EBIC strongly advises against the introduction of an additional obligation as proposed here by the draft guidelines. The

obligation would be feasible only if a common understanding between supervisory authorities and firms/obliged entities could be developed to the extent that this risk-increasing factor might be considered provided the information becomes incidentally known. However, until such understanding is established, a clarification that paragraph no. 19 sixth bullet does not constitute a compulsory requirement would be very much appreciated.

Paragraph No. 19, First and Fifth Bullet: The paragraph generally highlights the risk factors associated with the professional or business activity of the customer concerning corruption. In the first bullet the customer's professional activity is mentioned as a risk factor in their relationship with public procurement and in the fifth bullet point the guidance refers to possible risks linked to the customer's political connections. However, the draft lacks specific risk factors inherent to public procurement/ public-private investment projects. The following example may serve to illustrate this point: The construction of a subway line could be carried out as an investment managed through various public tenders. An operation of this magnitude is usually organised in the private sector through temporary joint ventures of different construction, transportation and technology companies. Usually, the role of financial institutions is to allow for the necessary funding for the investment.
Therefore EBIC suggests incorporating following possible questions to verify as further guidance on risk in this area.

- *Does the customer request financing to be able to carry out a public investment awarded through competitive bidding? Does the recovery of that funding come directly from the client? Can the money laundering risk be overridden through a pledge of receivables arising from the competitive bidding?*
- *In case there are indications for corruption by a customer, has this customer been awarded the tender via his company or via a joint venture? If the latter, does the client hold a decisive and majority participation in it? Are other companies involved ?*

Paragraph No. 20, General: The requirement for firms to consider the risk factors associated with a customer's or their beneficial owners' reputation in the introductory sentence should be modified as follows (inserted words in bold italics): "The following risk factors may be ***on a risk-sensitive basis and depending on the size and complexity of the firm's business*** relevant when considering the risk associated with a customer's or their beneficial owners' reputation:"
The modification ensures the application of the principle of proportionality to firms/obliged entities within the framework of the risk-based approach.

Paragraph No. 20, First Bullet:
Following from the general comments and reasons stated above (Paragraph No. 20, General) EBIC proposes to change the first sentence as follows (inserted words in bold italics): "~~Are there~~ ***Does the firm have any positive knowledge of*** any adverse media reports …"

Paragraph No. 20, Second Bullet: Following from the general comments and reasons stated above (Paragraph No. 20, General) EBIC proposes to delete the following words in the second

sentence: "… *or anyone associated with them* …" Due to the extremely wide scope of the term "anyone associated with them", the obligation would be feasible only if a common understanding between supervisory authorities and firms/obliged entities could be developed to the extent that this risk-increasing factor might be considered provided the information becomes incidentally known.

Paragraph No. 20, Third Bullet: We propose that the Guidelines refer the possibility that financial entities within and outside a group share information about suspicious transactions that have been reported. The creation of a register with proper safeguards for financial entities outside a group would be extremely useful to achieve the aims of the Directive and, thus, of the Guidelines.

Paragraph No. 21, Fourth Bullet: The requirement for firms to consider the risk factors associated with a customer's or their beneficial owners' nature and behavior should be modified as follows (inserted words in bold italics): "Does the customer issue bearer shares ***not traded in an organized market*** or …"
Bearer shares traded on stock exchanges in the EU and in third country jurisdictions with equivalent disclosure, transparency and AML/CFT standards are not subject to the provisions of the 4. AMLD and should be therefore exempt from such obligations.

Paragraph No. 22 (General): The requirement for firms to consider the risks associated with countries and geographic areas in which the customer or beneficial owner is based or has the main place of business or has relevant personal links is not always clearly discernible from the CDD information collected by the firm/obliged entity. Therefore EBIC proposes to allow firms to consider the issue on a risk-sensitive basis and therefore to replace the word "*should*" in the introductory sentence by the word "***may***".

Paragraph No. 22, Lit. a): In addition to the general comments and reasons stated above (Paragraph No. 22, General) EBIC would like to point out that the address of the beneficial owner is generally not known as there is no obligation in the 4. AMLD requiring the firm/obliged entity to check and verify such information within the general risk analysis framework. Such an obligation only exists in a high risk scenario. Therefore the address of the beneficial owner usually is not available for the risk assessment procedure. Following from the above it is, therefore, proposed to replace the word "*should*" by the word "***may***" in the introductory sentence which would also establish legal conformity with the relevant provisions of the 4. AMLD.

Paragraph No. 22, Lit. b): In addition to the general comments and reasons stated above (Paragraph No. 22, General and Lit. a)) EBIC would like to point out that from a legal point of view there is no obligation in the 4. AMLD requiring the firm/obliged entity to collect such information. The main place of the customer's or beneficial owner's business – especially within a group structure – is not always known to the firm/obliged entity. Therefore, EBIC advises strongly against the introduction of an additional examination criterion.

Paragraph No. 22, Lit. c): See general comments and reasons stated in paragraph no. 22 (general) as well as paragraph no. 22, lit. a and b. Notably "relevant personal links" are usually not known by firms unless there is incidental knowledge. Additionally the term does not contain any specific definition to differentiate between relevant and irrelevant links. Therefore we strongly advise to change this provision into an optional one.

Paragraph No. 23 (general) EBIC would like to stress the need for the Guidelines to provide further clarity on country risk. The 4.AMLD on several occasions refers to third countries which impose requirements "equivalent" to those laid down in this Directive (see Article 39 paragraph 4 and 5 and Article 28 paragraph b)/c)). It is EBIC's understanding that equivalence can only be recognized by the institution establishing the rules and it cannot be left to obliged entities to interpret the meaning of the provisions in the Directive. The Directive itself, however, does not provide any definition of which countries it refers to as equivalent. It does mandate the ESAs to provide guidelines on third countries having effective AML/CFT systems as part of its mandate on risk-factors (see Annex II paragraph 3 b), referred to by Article 16). Therefore EBIC believes it is part of the ESAs' mandate to include a list of countries with equivalent AML/CFT regimes or at least better explain how third country regimes can be considered equivalent by firms/obliged entities. In this sense EBIC would very much welcome the introduction of a review mechanism of third countries regarding their AML/CFT equivalence (like for example in the area of third country accounting, prudential or audit regimes where equivalence lists are prepared by ESAs). Through their different national assessments supervisory authorities possess valuable information on country risk that should be shared in the public domain. EBIC would be happy to work with the ESAs on this and contribute with financial institutions' experience and expertise in order to help ensure that the lists duly reflect country risk and are up to date.

Paragraph No. 23, Sixth Bullet: The requirement that firms should consider when identifying the level of ML/TF risk associated with a jurisdiction - besides the OECD country reports on the implementation of the OECD's anti-bribery convention - risk factors such as Transparency International's Corruption Perceptions Index (CPI) raises some concerns. The reason being that the methodology of the CPI is not transparent and the index as such is not developed and provided by an international or supranational organisation of which sovereign states are members. EBIC therefore proposes to recommend in the draft guidelines the use of either (a) risk factors and methodologies developed only by the inter-/supranational governmental organisations or (b) indices developed by all inter-/supranational governmental as well as non-governmental organisations. An exemplary enumeration of indices can hardly be deemed as helpful.

Paragraph No. 42, Second Bullet: The requirement that Simplified customer due diligence (SDD) measures firms/obliged entities may apply inter alia include the verification of the customer or beneficial owner "… *on the basis of one document only* …" represents a standard general due diligence procedure provided the document in question is reliable and

an official one. EBIC would like to emphasize that the proposed procedure in the draft guidelines is not only a SDD procedure and should, therefore, be deleted.

Paragraph No. 42, Third Bullet: The requirement to accept information obtained from the customer rather than an independent source when verifying the beneficial owner's identity represents standard general procedure in case of private fiduciary accounts (e.g. in low risk cases such as the holding of securities or account balances based on private agreements, in particular within the family, when children manage their parents' deposits (not as a donation) or a small sport association keeps the "club account" on its own escrow account for the group) as in such cases documents concerning the beneficial owner's identity are not existing. The requirement should, therefore be deleted.

Paragraph No. 42, Fifth Bullet: The requirement to adjust the frequency and intensity of transaction monitoring, for example by monitoring transactions above a certain threshold only (smurfing control) makes sense if the threshold values are publicly known. Threshold values set by firms/obliged entities individually are not suitable for conducting smurfing controls, as opportunities to circumvent the threshold do not exist simply by virtue of the fact that customers do not have any positive knowledge of such thresholds. Moreover, conducting smurfing controls requires the technical coverage of every transaction, i. e. transactions below the set threshold value. Qualifying transactions on the basis of a low amount threshold as less risky is a sensible approach in view of the mass-processing of a high number of transactions in day-to-day business. Furthermore, such an approach enables firms/obliged entities to focus technical resources on the transactions relevant for monitoring and AML/CFT research purposes.

Paragraph No. 49, First Bullet reads "The measures firms should take to establish the PEP's source of wealth and the source of funds will depend on the degree of high risk associated with the business relationship." It shall be added: *"If a certain threshold of yearly payments is not exceeded or regularly payments do not exceed a certain margin of the contractual owed payment rate (e.g. for more than 10 percent) the degree of risk shall not be considered as high and limited documentation measures shall apply."*

Paragraph No. 49, Second Bullet: The requirement to determine the appropriate level of seniority for sign off by the level of increased risk associated with the business relationship is not prescribed by the 4. AMLD which simply requires "senior level approval". In the opinion of EBIC a risk associated and case by case adjustment of the locus of "senior level" seems to be warranted only in those cases in which the appropriate degree of seniority of the decision-making level is not discernible or not ensured.

Paragraph No. 57: The paragraph lists possible EDD measures and includes "adverse media searches". It should be clarified that these searches can only be performed in a limited number of media. It cannot be expected that obliged entities go through all global media reports.

Paragraph No. 59: The requirement states that firms/obliged entities "… *should not enter into a business relationship **(where)** they are unable to comply with their CDD requirements, where they are not satisfied that the purpose and nature of the business relationship are legitimate or where they are not satisfied that they can effectively manage the risk that they may be used for money laundering and terrorist financing purposes* …"
In this context EBIC would like to draw the attention of the ESAs on the necessity to clarify the mode of operation of this provision in the light of certain categories of customers – like consumers or asylum seekers – for whom the Payment Accounts Directive (PAD) 2014/92/EU (see Articles 15 and 16), foresees the opening of a basic account. Moreover, with reference, in particular, to refugees and asylum seekers there are conflicting requirements between this paragraph and paragraph no. 99 second bullet which indicates that the fact that a product is limited to certain categories of customers such as refugees or asylum seekers amongst others indicates lower risk. EBIC would welcome an EU wide clarification on supervisors' expectations in the current context of strong flows of refugees and migrants from Africa and Asia, including from areas associated with strong terrorist activities. Clearer guidance on how to respond to basic financial services rights of refugees/migrants in light of the inherent risk linked to the country of origin and the limited ID verification possibilities would be welcome.

Paragraph No. 75: It should be noted that offering of payable through accounts can be prohibited as a risk minimizing measure.

Paragraph No. 78, Bullet 3: Further clarification would be welcomed as there are widely shared views (e.g. Wolfsberg Group principles) that the group entities in this context need to be treated as third banks and be assessed individually under a risk-based approach.

Paragraphs No. 80 and 90: The AML/CFT procedures of correspondent banks are mentioned on various occasions in the document. It should be mentioned that a qualitative assessment of such procedures is not possible in most cases as they are not being disclosed by correspondent banks on a regular basis (internal documents). It is also not possible (in most cases) to state if the correspondent bank implements its AML/CFT requirements effectively (Paragraph No. 80). The on-site-visit approach might be used on a case-by-case basis, which is very cost and time intensive.

Paragraph No. 84: We would like to stress the usefulness of CDD questionnaires provided by international organizations. These are likely to take into consideration new elements in the 4. AMLD in the near future. Therefore the ESA Guidelines should not generally reject their usefulness from the start. In this sense, we propose that, at least, the paragraph should be reworded, stating that those questionnaires may provide a minimum information to be taken into account but it could be necessary to complete it in order to comply with the Directive.

Paragraph No. 88, Fourth Bullet: The requirement states that firms/obliged entities should obtain approval from senior management, pursuant to Article 3(12) of the 4. AMLD, before establishing new correspondent relationships and that "... *the higher the risk associated with the relationship, the more senior the approving senior manager should be* ..."
As to the issue of a risk associated and case-by-case adjustment of the locus of senior level approval EBIC would like to refer to its comments stated with respect to the analogous requirement proposed in paragraph no. 49 (senior level approval of PEP) of the draft guidelines.

Paragraph No. 98, First Bullet: Considering the eIDAS and policy moves towards a digital single market, we think this paragraph should also acknowledge non face-to-face transactions as outside this idea of "anonymity" where there exist certain safeguards, such as the digital signature. The first bullet point ("the product's features might favour anonymity") could be interpreted to include non face-to-face transactions that use other security measure such as the digital signature. The Directive has recognized this in Annex III,2 c). However, for the sake of consistency, we think non face to face transactions should be referenced in this paragraph as well, together with the express exclusion of those non face-to-face transactions that use additional safety measures such as the digital signature, in paragraph 98, like it is presented as the first bullet point in Annex III to the Directive (directly before point 2 c)).

Paragraph No. 98, Third Bullet: We feel that, while obliged entities should naturally consider extra territorial customers in a more comprehensive manner within their risk assessment process (as would be usual), this provision in paragraph no. 98, describing cross border transactions as an explicit indication of a higher risk, is against the drive to unify the European market and should therefore be removed.

Paragraph No. 99, First Bullet No. iii: We feel that this point can be split into two different points. A "*low value loan facility*" and a facility where the "*legal and beneficial title to the asset is not transferred to the customer until the contractual relationship is terminated*" should be detailed as separate and distinct indicators of lower risk.

Paragraph No. 99, First Bullet No. iii: In addition to the point above, the proposed new point "*legal and beneficial title to the asset is not transferred to the customer until the contractual relationship is terminated*" should be extended in order to include a situation involving a facility where the legal and beneficial title is never passed at all. It is accepted that this may be implicit, but an explicit recognition would be helpful.

Paragraph No. 99, Third Bullet: We specifically welcome the inclusion of this provision, explicitly recognising transactions, that are carried out through an account held in the customer's name at a credit or financial institution that is already the subject to AML/CTF requirements equivalent to those required by the Directive, as an accepted indicator of lower risk. This provision is helpful in that it will assist obliged entities when dealing with

customers that have already been the subject of, and continue to be subjected to AML/CTF checks, by a regulated obliged entity.

Paragraph No. 99, First Bullet: A new paragraph should be added stating "*iv. a long-term purpose-orientated savings agreement, serving for instance as a safeguard for retirement provisions or for the acquisition of self-used real estate and where the incoming payments originate from a payment account which is identified in accordance with the general customer due diligence provisions*".

Paragraph No. 100, First Bullet No. iii: The requirement states the fact that a customer is an undertaking associated with higher corruption risk. In the opinion of EBIC the enumeration of sectors associated with higher risks provided by the draft guidelines are of an indicative and non-exhaustive nature. Therefore, reference is made to the comments stated with respect to the requirements proposed in paragraph no. 19, first bullet of the draft guidelines.

Paragraph No. 106, First Bullet: The requirement states that in case of EDD the verification of the customer's and the beneficial owner's identity should be carried out on the basis of more than one reliable and independent source.
Reference is made to EBIC's comments stated with respect to the requirements proposed in paragraph no. 42, second bullet of the draft guidelines. EBIC would once more like to emphasize that only one document is deemed sufficient for the purpose of identification of the customer. As to the identification of the beneficial owner it is in practice and in some cases difficult to ascertain reliable data sources. For verification purposes using one additional reliable source of information to the one used for identification should be sufficient and is only workable in practice if the registry to be established pursuant to Article 30(3) of the 4. AMLD can be used as such.

Paragraph No. 116, Fourth Bullet: The requirement states that "*… frequent changes in customer´s identification data, such as home address, IP-address, linked bank accounts …*" may indicate higher risk.
EBIC would like to point out that the IP-address is no customer identification element/criterion and it is to be questioned whether changes in the IP-address can be detected easily in practice. Therefore, in the opinion of EBIC frequent changes in the IP-address do not constitute a high risk factor and the corresponding requirement should be, therefore, deleted.

Paragraph No. 122, Fourth Bullet: The requirement states that examples "*… of EDD measures firms should apply in a high risk situation include … obtaining information about the merchant/payee, in particular where the E-money issuer has grounds to suspect that their products are being used to purchase illicit or* ***age-restricted goods****.*"

EBIC would like to point out that "***age-restricted goods***" as such do not possess any intrinsic, age-restricted driven reference to ML or TF. Therefore EBIC advocates the deletion of the words "***or age-restricted goods***" in the fourth bullet.

Paragraph No. 124, Third Bullet: The requirement states examples of SDD measures firms/obliged entities may apply in low risk situations and which include verifying the customer's identity "… *on the basis of fewer sources* …"
Due to the absence of further reliable sources of documentation in certain low risk situations as mentioned in our comments on paragraph no. 42 and in general the low amount of reliable sources as mentioned in our comments regarding paragraph no. 106 this bullet should be deleted in accordance with the suggested changes to the other paragraphs.

Paragraph No. 144, Second Bullet: The requirement states examples of higher risk that are analogous to those stated in paragraph no. 19, first bullet. Moreover, the question may be raised, as to why money service businesses represent higher risks.
Due to the analogy of the issues in paragraph no. 19, first bullet reference is made to the respective comments of EBIC.

Paragraph No. 159, Fourth Bullet: The requirement states that "… *significant discrepancies in documentation, for example between the description of goods in key documents (i. e. invoices and transport documents) and actual goods shipped* …" may indicate higher risk.
This requirement appears to have been borrowed from the anti-proliferation financing regime of the FATF. EBIC would like to emphasize that banks deal with documents (e. g. letters of credit) and not with goods, services or performance to which the documents relate. Therefore, it should be clearly stated that banks are only involved in the execution of the financial transaction and not in the objectives of the underlying business transaction that may contain ML, TF or proliferation financing risks. They can obtain only limited information, if any at all, about the delivery channels and end users connected with the exported goods. To that end, it should be emphasized that banks pursue an entity-based approach and not a commodity- or activity-based approach in their research and monitoring activities. Moreover, the task and responsibility of detecting discrepancies clearly rests with the export control and prosecution authorities as well as the intelligence services. Therefore, the rationale and value of this requirement is to be strongly questioned.