

Opinion of the European Banking Authority on ‘de-risking’

Introduction and legal basis

1. Financial institutions and credit institutions (hereinafter ‘institutions’) have to put in place and maintain policies and procedures to comply with their legal obligations in accordance with Article 8 of Directive (EU) 2015/849 (AMLD)¹. These policies and procedures include policies and procedures to identify and manage the risks to which they are exposed, for example credit risk or the risk that they may be used for money laundering and terrorist financing (ML/TF) purposes. Where a financial institution takes a decision to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk, or to refuse to carry out higher ML/TF risk transactions, this is referred to as ‘de-risking’.
2. While decisions not to establish or to end a business relationship, or not to carry out a transaction, may be in line with Article 14(4) of Directive (EU) 2015/849 (AMLD), de-risking of entire categories of customers, without due consideration of individual customers’ risk profiles, can be unwarranted and a sign of ineffective ML/TF risk management.
3. To assess the scale and impact of de-risking across the EU and to better understand why institutions decide to de-risk particular categories of customers instead of managing the risks associated therewith, the EBA launched a series of information gathering exercises in 2020-21, reaching out to all relevant competent authorities across the EU, as well as to external stakeholders.
4. Based on this, the EBA assessed whether it should take additional steps to complement relevant provisions in existing EBA instruments to address unwarranted de-risking in the EU and to promote further sound ML/TF risk management practices. This Opinion sets out what these additional steps should be.
5. The EBA has consulted stakeholders on the issues raised in this Opinion through *inter alia* a public Call for Input, public roundtable discussions and through a number of engagements with the Banking Stakeholder Group. These consultations were performed in addition to ongoing

¹ Directive (EU) 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

discussions on emerging findings and recommendations in the EBA's policy-making committees, as well as through bilateral exchanges with competent authorities and international standard setting bodies such as the secretariat of the Financial Action Task Force. The costs and benefits assessments made in relation to the EBA's guidelines on ML/TF Risk Factors and on risk-based AML/CFT supervision also apply to the proposals made in this Opinion.

6. The EBA competence to deliver an Opinion is based on Article 16a(1) and Article 29(1)(a) of Regulation (EU) No 1093/2010², as part of the EBA's objective to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union in relation to financial and credit institutions' approach to AML/CF risks, in particular to de-risking, under Directive (EU) 2015/849.
7. The Board of Supervisors has adopted this Opinion which is addressed to competent authorities and the European Commission and the EU co-legislators in accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors.³

General comments

8. The EBA found that de-risking occurs across the EU and affects different types of customers or potential customers of institutions, including specific segments of the financial sector such as respondent banks, payment institutions (Pis) and electronic money institutions (EMIs), as well as certain categories of individuals or entities that can be associated with higher ML/TF risks, for example asylum seekers from high ML/TF risk jurisdictions or not-for-profit organisations (NPOs). While the impact and scale of de-risking within different categories of customers vary, de-risking can lead to adverse economic outcomes or amount to financial exclusion. Financial exclusion is of concern, as access to at least basic financial products and services is a prerequisite for participation in modern economic and social life.
9. At EU level, de-risking, especially if it is unwarranted, has a detrimental impact on the achievement of the EU's objectives, in particular in relation to fighting financial crime effectively, promoting financial inclusion and competition in the single market. Where a Member State's respondent banks are being de-risked, this can also affect the stability of the financial system of that Member State.
10. The EBA identified a number of drivers of institutions' decisions to de-risk. These drivers are not mutually exclusive and in practice are often combined. These include situations where ML/TF risks or reputational risks exceed institutions' risk appetite, where the institutions lack the

² 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).

³ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

relevant knowledge or expertise to assess the risks associated with specific business models or where the real or expected cost of compliance exceeds profits.

11. Since 2016, the EBA has issued guidelines and opinions to help institutions manage ML/TF risks associated with individual business relationships in an effective manner by setting clear, regulatory expectations of the steps institutions should take in that regard. These include the EBA's 2016 Opinion on asylum seekers⁴ and the EBA ML/TF Risk Factors Guidelines from 2017 (revised in 2021).⁵ These instruments are designed to be used by competent authorities as well when determining whether institutions' AML/CFT systems and controls are adequate and effective, and are complemented by EBA guidelines on risk-based supervision⁶ and consecutive EBA Opinions on ML/TF risks.⁷ Section 7 of the annexed report summarises the existing provisions in EBA instruments that contribute to addressing key decision's drivers of de-risking and, if applied effectively, should contribute to reducing significantly instances of unwarranted de-risking.
12. The EBA commits to following up with competent authorities on the steps they have taken to tackle unwarranted de-risking to inform the next EBA Opinion on ML/TF risks under Art 6(5) of the AMLD, which is due to be issued in 2023.
13. The EBA further notes, as set out in its response to the Commission's call for advice on the future AML/CFT framework, that in making decisions to de-risk certain customers or categories of customers, institutions may face conflicting provisions in EU law, in particular in relation to Directive (EU) 2015/849 (AMLD), Directive (EU) 2014/92 on access to payment accounts with basic features (PAD)⁸ and Directive (EU) 2015/2366 on payment services in the internal market (PSD2).⁹
14. Specifically, in relation to the PAD, the EBA notes that while Article 16 of that Directive creates a right for customers who are legally resident in the Union to obtain a basic payment account, the PAD also provides that this right applies only to the extent that institutions can comply with their AML/CFT obligations. No clarification is provided on the interaction between AML/CFT requirements and the right to open and use a payment account with basic features.

⁴ [EBA Opinion on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories](#), EBA-Op-2016-07.

⁵ [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁶ [Guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72), EBA/GL/2021/16.

⁷ EBA [Opinion](#) on the risks of money laundering and terrorist financing affecting the European Union's financial sector ("The Opinion on ML/TF Risks").

⁸ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Text with EEA relevance), OJ L 257, 28.8.2014, p. 214–246.

⁹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), OJ L 337, 23.12.2015, p. 35–127.

15. In relation to this, the EBA notes that whereas Article 19(4) of the PAD provides that consumers must be given the grounds and the justification for a decision to terminate the contract for a payment account with basic features, the right to be told can be in conflict with the requirements of AMLD that prohibit 'tipping-off', as detailed in section 3 of the report.
16. In relation to the PSD2, the EBA notes that Article 36 of the PSD2 provides that "Member States shall ensure that payment institutions have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis" and that "credit institution shall provide competent authorities with duly motivated reasons for any rejection". The EBA's findings suggest that the high-level nature of this provision and the lack of guidance for credit institutions on the circumstances in which the closure of an account must be notified have given rise to divergent application across the EU and divergent interpretations across CAs.
17. In light of the above, the EBA considers that, to address unwarranted de-risking and promote sound ML/TF risk management, further action by competent authorities and the co-legislators is required to support the effective implementation of provisions in existing EBA instruments and to address provisions that may be conflicting across Level 1 instruments going forward.

Proposals addressed to competent authorities

18. The EBA invites competent authorities to support institutions and their users and take the steps necessary to promote the financial inclusion of categories of customers that are particularly affected by unwarranted de-risking. The EBA guidelines on AML/CFT risk-based supervision¹⁰ have relevant provisions in that regard. The EBA reminds competent authorities that creating the conditions to provide access to financial services to legitimate consumers is a necessary means of fostering their participation in the internal market.
19. Furthermore, the EBA encourages competent authorities to:
- a. engage more actively with institutions that de-risk and with users of financial services that are particularly affected by de-risking to raise awareness of the rights and responsibilities of both institutions and their customers and set out in practical terms what each can do to facilitate legitimate customers' access to financial services. Where specific information gaps exist that contribute to unwarranted de-risking, competent authorities should consider taking steps to close those information gaps. This could, for example, take the form of information leaflets on the type of evidence customers who are asylum seekers can provide to satisfy institutions' information needs, on the business structure of NPOs and whose identity institutions should establish and verify, and consumer leaflets that set out what type of information institutions need to comply with their AML/CFT

¹⁰ [Guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72), EBA/GL/2021/16.

obligations. Similarly, where innovative financial solution providers are being de-risked, competent authorities could work with the sector to strengthen institutions' understanding of those solutions while at the same time take steps to ensure that solution providers that are themselves obliged entities comply with their AML/CFT obligations. Further examples of targeted initiatives competent authorities have taken are set out in section 6 of the EBA's report; and

- b. remind credit and financial institutions that, if this is warranted by the outcome of their assessment of ML/TF risk associated with a customer, they can opt to offer only basic financial products and services in order to restrict the ability of users to abuse these products and services for financial crime purposes.

Proposals addressed to the European Commission, Parliament and Council

20. In July 2021, the European Commission published an AML/CFT package that contains a number of legislative proposals that could go some way towards mitigating unwarranted de-risking and associated financial exclusion. In particular, the Commission put forward its Proposal for an Anti-Money Laundering Regulation (AMLR)¹¹, which states in Recital 42 and Article 17(2) that where institutions take a decision to not enter into a business relationship with a prospective customer, the customer due diligence (CDD) records should include the grounds for such a decision. In the Commission's view, this would then enable supervisory authorities to assess whether institutions have appropriately calibrated their CDD practices.

21. The EBA, based on its finding in its report on de-risking, considers that this provision should be complemented by steps to clarify the relationship between provisions in the PAD, PSD2, and the Union's AML/CFT requirements. In particular, the EBA advises the European Commission to take the following action:

- a. In relation to the PAD, and in line with the EBA's Report on the future AML/CFT framework in the EU,¹² take steps to clarify the interaction between AML/CFT requirements and the right to open and use a payment account with basic features, for example by including in the PAD a mandate for guidelines on this point, which could be prepared jointly by the EBA and the new Anti-Money Laundering Authority (AMLA)¹³ that the Commission is proposing to establish. Such guidelines could clarify in which situations an account with basic features should be rejected or closed, or the basic features be curtailed, and thus contribute to ensuring that

¹¹ [Proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), COM/2021/420 final.

¹² [Response to the European Commission's call for advice](#) on defining the scope of application and the enacting terms of a regulation to be adopted in the field of preventing money laundering and terrorist financing (EBA/REP/2020/25) ("EBA report on the future AML/CFT framework in the EU").

¹³ Proposal for a [Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism](#) and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, COM/2021/421 final.

the balance is maintained between financial inclusion and the application of AML/CFT requirements. Consideration should also be given to ensuring, through changes to the PAD or through guidelines, that a review process or complaint mechanism is in place in institutions to ensure a transparent and fair process for customers.

- b. To contribute to mitigating significantly the risk of unwarranted impediments to competition, clarify the application of Article 36 of PSD2 during the forthcoming review of PSD2. As part of this, the Commission may wish to consider mandating the EBA to develop technical standards to ensure the consistent application of Article 36. Such a mandate could include the creation of a template that credit institutions would be required to use when notifying competent authorities when they decide to reject an account. Regulators at EU level could gain more robust insight on the most common reasons for rejection and take targeted steps to address those reasons if necessary.

Finally, as Article 36 limits the notification process to the onboarding stage, the Commission may wish to consider expanding this requirement to also include decisions made by credit institutions to offboard payment institutions in existing business relationships.

This Opinion will be published on the EBA's website.

Done at Paris, 5 January 2022

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisor



EBA REPORT

ON DE-RISKING AND ITS IMPACT ON ACCESS TO
FINANCIAL SERVICES

EBA/REP/2022/01

EBA

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Abbreviations

AML	Anti-Money Laundering Directive
AML	Anti-Money Laundering
CA	Competent Authority
CFT	Countering the financing of terrorism
EMI	Electronic money institutions
FATF	Financial Action Task Force
ML	Money Laundering
MONEYVAL	Committee of Experts on the Evaluation of anti-money laundering Measures and the Financing of Terrorism
MoU	Memorandum of Understanding
NPO	Not for Profit Organisation
NRA	National Risk Assessment
PEP	Politically Exposed Person
PI	Payment Institution
SNRA	Supranational Risk Assessment
TF	Terrorist Financing
UBO	Ultimate Beneficial Owner
VASPS	Virtual Assets Providers
VCs	Virtual currencies

Executive Summary

Financial institutions and credit institutions (hereinafter ‘institutions’) have to put in place and maintain policies and procedures to comply with their legal obligations. These policies and procedures include policies and procedures to identify and manage the risks to which they are exposed, for example credit risk or the risk that they may be used for money laundering and terrorist financing (ML/TF) purposes. Where a financial institution takes a decision to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk, or to refuse to carry out higher ML/TF risk transactions, this is referred to as ‘de-risking’.

While decisions not to establish or to end a business relationship, or not to carry out a transaction may be in line with the provisions of Directive (EU) 2015/849 (AMLD), de-risking of entire categories of customers, without due consideration of individual customers’ risk profiles, can be unwarranted and a sign of ineffective ML/TF risk management.

To assess the scale and impact of de-risking across the EU and to better understand why institutions decide to de-risk particular categories of customers instead of managing the risks associated therewith, the EBA launched in 2020-21 a series of information gathering exercises, reaching out to competent authorities across the EU, as well as to external stakeholders. The EBA found that:

- de-risking occurs across the EU and affects a great variety of customers, including customers that are themselves institutions such as respondent banks, payment institutions (PIs) and electronic money institutions (EMIs), as well as certain categories of individuals or entities that are associated with higher ML/TF risks, for example asylum seekers or Not-for-Profit Organisations (NPOs).
- while the impact and scale of de-risking within the different categories of customers vary, it can lead to adverse economic outcomes or amount to financial exclusion. Financial exclusion is of concern because access to at least basic financial products and services is a prerequisite for participation in modern economic and social life, and creating the conditions to provide access to financial services to legitimate consumers is a necessary means of fostering their participation in the internal market.
- at EU level, de-risking, especially if unwarranted, has a detrimental impact on the achievement of the EU’s objectives, in particular in relation to fighting financial crime effectively, and promoting financial inclusion and competition in the single market. Where a Member State’s respondent banks are being de-risked, de-risking can also affect the stability of the financial system of that Member State.

The EBA identified a number of drivers of institutions’ decisions to de-risk. These drivers are not mutually exclusive and in practice are often combined. These include situations where ML/TF risks

or reputational risks exceed institutions' risk appetite, where the institutions lack the relevant knowledge or expertise to assess the risks associated with specific business models or situations in which the real or expected cost of compliance exceeds profits.

Since 2016, the EBA has issued guidelines and opinions to help institutions manage ML/TF risks associated with individual business relationships in an effective manner by setting clear, regulatory expectations of the steps institutions should take in that regard. Applied effectively, these instruments should contribute to reducing unwarranted de-risking. The EBA assessed whether further steps should be taken to complement provisions in existing EBA instruments. The Opinion that accompanies this report sets out what these additional steps could be.

1. Background and rationale

1. Financial institutions and credit institutions (hereinafter ‘institutions’) have to put in place and maintain policies and procedures to comply with their legal obligations. These policies and procedures include policies and procedures to identify and manage the risks to which they are exposed, for example credit risk or the risk that they may be used for money laundering and terrorist financing (ML/TF) purposes. Where an institution takes a decision to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk, or to refuse to carry out higher ML/TF risk transactions, this is referred to as ‘de-risking’.
2. While decisions not to establish or to end a business relationship, or not to carry out a transaction, may be in line with the provisions of Directive (EU) 2015/849 (AMLD),¹⁴ de-risking of entire categories of customers, without due consideration of individual customers’ risk profiles can be unwarranted and a sign of ineffective ML/TF risk management that ultimately can affect wholesale categories of customers.
3. The EBA has taken a number of steps to address unwarranted de-risking and promote sound risk management from an AML/CFT perspective that included:
 - the EBA’s 2016 Opinion on asylum seekers, which sets out what institutions should do to mitigate risks of financial exclusion of asylum seekers in situations where they are unable to provide the standard Customer Due Diligence documentation;¹⁵
 - the EBA ML/TF Risk Factors Guidelines from 2017 (revised in 2021)¹⁶ that set clear expectations regarding institutions’ management of ML/TF risks and serve as a reminder that AMLD does not require institutions to no longer offer services to some categories of customers associated with higher ML/TF risk, but to manage associated risks on a risk-sensitive basis;

¹⁴ Article 14.4. specifies that ‘Member States shall require that, where an obliged entity is unable to comply with the customer due diligence requirements laid down in point (a), (b) or (c) of the first subparagraph of Article 13(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall terminate the business relationship and consider making a Suspicious Transaction report to the FIU in relation to the customer in accordance with Article 33.’

¹⁵ [Opinion](#) of the European Banking Authority on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories, EBA-Op-2016-07.

¹⁶ [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

- the EBA revised Risk-based Supervision Guidelines,¹⁷ which emphasise the importance for CAs to understand why institutions resort to de-risking and why some segments of the financial sector and/or categories of customers are particularly affected by de-risking. The guidelines also require CAs to consider whether their guidance or communications could have unintended consequences and could potentially lead to unwarranted, wholesale de-risking of entire categories of customers.
4. In addition, the EBA highlighted in its three successive Opinions on ML/TF risks¹⁸ that customers affected by de-risking may resort to alternative payment channels in the EU and elsewhere to meet their financial needs. As a result, transactions may no longer be monitored, making the detection and reporting of suspicious transactions and, ultimately, the prevention of ML/TF more difficult.
 5. On 1 January 2020, the EBA received a new legal mandate under Article 9a of Regulation (EU) No 1093/2010¹⁹ to lead, coordinate and monitor the EU financial sector's fight against ML/TF, and to approach that fight holistically across all areas of its work. In light of de-risking's detrimental impact on EU's objectives to fight financial crime effectively and to promote, simultaneously, financial inclusion and competition in the single market while maintaining the stability of the financial system, the EBA decided to assess the scale and impact of de-risking at EU level with a view to tackling the drivers of de-risking comprehensively and not purely from an AML/CFT perspective.²⁰
 6. For this purpose, and to acquire a more comprehensive and robust understanding of the scale of de-risking at EU level, the EBA launched in spring 2020 a series of information-gathering exercises to better understand the scale and impact of de-risking at EU level. These included a call for input on de-risking²¹ to reach out to all stakeholders across the financial sector and its users, and extensive engagements with all relevant competent authorities.
 7. The EBA assessed on this basis whether further steps should be taken to tackle unwarranted de-risking, including by exploring the interaction between provisions in the Anti-Money Laundering Directive (AMLD), the Payment Account Directive (PAD) and Payment Service Directive 2 (PSD2) that, together, could help ensure that legitimate customers have access to the financial system.

¹⁷ [Guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72), EBA/GL/2021/16.

¹⁸ The EBA is mandated to issue under Art. 6(5) of Directive (EU) 2015/849 every two-year [Opinion](#) of the European Banking Authority on the risks of money laundering and terrorist financing affecting the European Union's financial sector ("The Opinion on ML/TF Risks").

¹⁹ 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. 12–47.

²⁰ EBA Regulation, Article 1(5)

²¹ [Call for input on 'de-risking' and its impact on access to financial services | European Banking Authority \(europa.eu\)](#)

2. Methodology

8. To assess the scale, impact and reasons of de-risking at EU level, the EBA carried out a series of information-gathering exercises throughout 2020 and 2021:

- Firstly, the EBA gathered information from CAs:
 - as part of the questionnaire that circulated to AML/CFT CAs and was prepared in summer 2020 for the purpose of the EBA's Opinion on ML/TF risks, the EBA included a dedicated section on de-risking in order to gain insight into the CA's assessment of the scale of the issue in their jurisdictions;
 - through a series of structured discussions throughout 2020 and 2021 at the level of three of its standing committees dealing with AML/CFT, consumers' protection and financial inclusion, and with payment services. The purpose of these exchanges was to gain comprehensive insights from all relevant CAs and to cover all the angles of de-risking;
 - in autumn 2021, the EBA conducted in-depth interviews with five AML/CFT NCAs about their experience of de-risking and the initiatives they had taken to address it.
- Secondly, in addition to information gathered through CAs, the EBA reached out to external stakeholders through a public 'Call for Input' launched in June 2020 to understand better the scale and impact of de-risking in the EU. The Call included a first set of questions that targeted institutions that take decisions to de-risk, to identify the drivers of de-risking, whereas the second set of questions targeted those affected by these decisions. In total, 293 respondents contributed to the Call, including 11 financial and credit institutions and consumer organisations.
- Thirdly, as part of the Call for Input, the EBA organised a virtual panel in September 2020 where it invited Not-for-Profit Organisations (NPOs) as one of the customer groups that is most impacted by de-risking, to share their experiences and concerns about de-risking in the EU.

9. The EBA adopted a multi-step approach to assess respondents' contributions to the Call for Input. The EBA's first step to analyse the responses was to categorise the respondents according to their role in the 'de-risking' process (i.e. those making decisions to de-risk and those affected by it at the onboarding or offboarding stage) and to classify them according to their status (i.e. credit and financial institutions, private individuals, NPOs, etc.). An overview of the contributors to the Call is presented in the Annex to this report. This exercise was followed by the identification of all the issues reported by all respondents in order to better understand the problems and challenges caused by de-risking.

10. When the EBA considered the responses received through the Call, four important caveats were kept in mind:

- the number of respondents by category may not reflect the categories that are most affected by de-risking across the EU;
- the distribution of responses was such that the vast majority of the respondents originated from individuals and entities that are affected by de-risking, rather than those that take de-risking decisions;
- in the responses submitted by those affected by de-risking, it was not always possible to determine whether they had been de-risked on the basis of ML/TF risks, or for other reasons, such as credit risks or lack of profitability;
- while all respondents indicated that they were operating in the EU, no clear conclusions related to the scale of de-risking across the EU could be drawn from the geographical repartition of the respondents.

11. In light of these caveats, the EBA presented and discussed different aspects of the input received through the Call at the level of the EBA's relevant standing committees in order to get NCAs' views on the matters raised, refine its analysis and gain a comprehensive view of the issues at stake. Therefore, in drafting this report, the EBA took into account all the views expressed during this series of information-gathering exercises.

12. The EBA also drew from information gathered as part of the EBA's biennial report on consumer trends (the Consumer Trend Report – CTR)²² that is primarily based on the consumer protection priorities identified by NCAs, and that uses further input from a selection of national and EU consumer associations, the members of the Financial Dispute Resolution Network (FIN-NET) and EU industry associations. The EBA used additional information such as the analysis carried out by international organisations like the Financial Action Task Force (FATF)²³, the Council of Europe (CoE)²⁴, the Basel Committee²⁵ and the World Bank²⁶.

13. The EBA then conducted its own assessment of the drivers of de-risking in the EU and the impact of de-risking on the stability and effectiveness of the EU's financial system, and on the effectiveness of the fight against financial crime.

²² EBA [Consumer Trends Report](#), REP/2021/04.

²³ FATF [clarifies risk-based approach: case-by-case, not wholesale de-risking](#), October 2014; FATF, [Drivers for "de-risking" go beyond AML/CFT](#), 2015; FATF, [Mitigating the Unintended Consequences of the FATF Standards](#), 2021.

²⁴ CoE, [MONEYVAL Report](#) on 'De-risking within Moneyval states and territories', 2015.

²⁵ Basel Committee on Banking Supervision, [Guidelines](#) on Sound management of risks related to money laundering and financing of terrorism, 2014 (updated in 2020).

²⁶ World Bank report, [The Decline in Access to Correspondent Banking Services in Emerging Markets: Trends, Impacts and Solutions](#), 2018

3. Issues reported by those affected by de-risking

14. This chapter provides an overview of the issues reported by those affected by de-risking that responded to the EBA's Call for Input launched in summer 2020. Given the great variety of respondents that contributed to the Call, the EBA classified these issues reported by respondents in the following two main categories:

- Those issues reported by institutions (i.e. CIs, PIs, EMLs, other FinTech firms, trust managers etc.);
- Those issues reported by the respondents that are not institutions, such as private individuals, precious stones businesses or NPOs.

3.1. Issues reported by credit institutions affected by de-risking

15. Among the respondents, the EBA has received contributions from several CIs that are respondent banks, indicating that they have seen their correspondent banking relationship (CBR) terminated because of ML/TF concerns.

16. Respondent banks that have lost their corresponding banking relationships claimed that:

- the decisions made to end the business relationships were based on certain characteristics (e.g. banks operating in high-risk jurisdictions or jurisdictions grey-listed by the FATF) irrespective of the banks' individual AML/CFT efforts;
- the termination of the business relationship led to a loss of access to USD clearing and/or EUR/SEPA clearing, as well as to cash management services and international payment services;
- the termination also led to reputational damage, and in light of widespread closures of CB relationships and the associated risk of losing access to dollar clearing in particular, some respondent banks took steps to lower their risk profiles by turning down or closing business relationships.

17. Where decisions were made to end an existing business relationship, several respondents complained that the two or three months notification provided by CIs before the termination of the business relationship was not sufficient. For those respondents that did not find alternatives in the meantime, a decision to terminate a CBR led to disruptions in the business continuity, such as account closures, loss of customers and, ultimately, closure of business. However, some respondents indicated that as they were relying on more than one CBR, they were able to maintain their operations, but had to review their pricing fees for their customers. Among the

solutions found to overcome difficulties induced by a loss of CBRs, some respondents indicated they have sought new CBRs with institutions located outside of the EU.

3.2. Issues reported by PIs/EMIs affected by de-risking

Payment institutions

18. Most of the respondents that are PIs affected by de-risking claimed that these decisions were based on banks' policies as applied to the whole sector, and they referred to these decisions as 'blanket exit policies'. Several respondents indicated that in their view, the correspondence with banks in this context often remained vague, with no clear explanations as to why de-risking decisions were made. Respondents suggested that AML/CFT concerns were used as a 'pretext' to reduce competition in the market.
19. In terms of impact, the respondents stated that when decisions were made at the onboarding stage, this forced some PIs – especially small ones – out of the market. When firms made decisions to terminate existing business relationships, and especially when the decision was sudden and at very short notice, respondents also reported that this led to significant service disruptions, including PIs not being able to deposit the clients' money with the banks and, as a result, forcing them to store and secure large amounts of cash on their own premises. One respondent stated that this situation meant that banknotes had to be moved by plane or armoured car, involving more expensive – and risky – cash collection processes.
20. Other respondents also claimed that decisions to de-risk affect customers who cannot, for instance, send money to their relatives abroad. These respondents (mostly trade associations) claimed that this could lead to a lack of means of payment, which would consequently cut off the 'payments life-line' of the poorest countries, which in turn, they argued, would create obstacles to poverty alleviation worldwide.
21. In terms of opportunities for PIs to request banks to review the de-risking decision, most of the respondents indicated that decisions made by banks were very often irrevocable, without an opportunity of appeal or review.
22. Respondents also indicated that very few alternatives to access financial services were possible once they were de-risked. Options included the use of other PSPs (rather than banks), or seeking new banking relationships with alternative partners (other banks, but also FinTech firms) that may come at a much higher price, with an impact on fees applied to their own customers.

E-money institutions

23. Similar to PIs, EMIs claimed that decisions to de-risk them amounted to decisions affecting the entire sector. Banks are said to simply refuse servicing EMIs, irrespective of their business offering and customer profile. According to the respondents, the main argument used by banks for terminating an existing business relationship is the banks' risk appetite and perception that EMIs are unable to meet their AML/CFT obligations.

24. In terms of impact, EMIs indicated that decisions to de-risk them led to disruptions in their business continuity. Respondents mentioned, for instance, the time spent and associated cost to secure and switch to new bank accounts.

25. Trade associations indicated that several of their members were de-risked by institutions with whom they had had business relationships for eight to ten years, with sometimes short notice (one or two months). According to these associations, the firms in question had varying risk profiles and included small start-ups, as well as large well-established firms with a considerable customer base.

26. EMIs furthermore indicated that they were not provided with an opportunity for review and that the appeal process was often opaque.

27. EMIs that had been de-risked indicated that very few other options were available to have or maintain access to financial services. These included, similar to PIs, the use of other PSPs. Some respondents further indicated that to preserve business continuity, they tended to have several bank accounts when possible.

28. Both EMIs and PIs argued that Article 36 of PSD2, which provides that Member States shall ensure that PIs have access to CIs' payment accounts services, and that credit institutions shall notify CAs when accounts of PIs/EMIs are rejected, was not properly implemented across the EEA. Respondents to the Call claimed in particular that very few Member States currently have:

- a formal mechanism in place for CIs to report to the NCA under this Article;
- guidance for CIs in relation to their obligations under this Article (i.e. at what stage a refusal to onboard must be notified, what mechanism to use, and in what circumstances the closure of an account must be notified);
- transparent or formal mechanisms for PIs or EMIs to submit a complaint about being de-risked.

3.3. Issues reported by other respondents from the financial sector

29. In addition to CIs, PIs and EMIs, the EBA received input from additional respondents affected by de-risking and operating in the financial sector. These include fund managers, trust providers and FinTech firms handling virtual currencies (VCs).

Fund managers

30. The EBA received feedback from fund managers and trust providers. Some respondents referred to the cancellation of bank accounts, and restrictions imposed on internet banking and all other banking services.

31. According to the respondents in this category, the reasons provided by banks that made these decisions included the fact that customers were not authorised and supervised in the Member State, or that the customers' clients' sources of wealth were not located in the EU.

32. Several respondents mentioned that in the end, they had to open accounts at a bank outside the EU and/or with a PSP.

FinTech firms handling virtual currencies

33. Several respondents provided information that would tend to indicate that FinTech firms handling virtual currencies (VCs) are particularly affected by de-risking:

- Some respondents claimed that some card networks have implemented new sections into their security rules and procedures, specifically requiring all acquirers dealing with merchants that handle VCs to provide an amount of information deemed as 'disproportionate' by the respondents.
- Respondents also indicated that banks require what they described as excessive documentation to justify specific transfers, propose unreasonable terms and/or extraordinary fees at the onboarding stage.
- Respondents indicated furthermore that they were denied access to operational bank accounts used for transfers, salary deposits and account top-ups, and bank accounts to enable fiat gateways to crypto and/or access to some transactions (i.e. cancellation of cross-border payment services when moving client funds, wire transfers for GBP to EUR).

34. Respondents indicated that as a result of these decisions, they were unable to process incoming payments from clients, which affected their profit and led to reputational damage.

35. Respondents indicated that alternatives included trying different banking institutions and/or engaging with start-up EMIs, but this was said to be 'unstable'.

3.4. Issues reported by respondents that are not institutions

36. The EBA received input from respondents that were not operating in the financial sector. These included NPOs and dealers in precious stones, in particular diamonds.

NPOs

37. The EBA received input from NPOs, in particular NPOs associated with high-risk jurisdictions, both through the Call and via the dedicated event organised with NPOs in September 2020. Respondents in this category reported a number of difficulties in accessing financial services, echoing international organisations' reports.²⁷ Respondents indicated that in some instances, they had been denied opening a bank account. In other instances, they reported difficulties with

²⁷ FATF, [Financial Inclusion and NPOs](#); NYU Paris EU Public Interest Clinic, [Bank De-Risking of Non-Profit Clients](#), 2021.

their existing accounts, such as excessive delays in cash transfers in certain jurisdictions where they are conducting their humanitarian interventions; freezing accounts and in extreme cases, closing accounts and exiting a customer relationship.

38. Respondents indicated these decisions were made because they are operating in or near high-risk jurisdictions, or because their activities are linked to such jurisdictions (e.g. NPOs that deliver aid and need to transfer funds in jurisdictions that have high ML/TF risks such as Syria). This is explained, in their views, by banks' fears of breaching sanction regimes adopted at the level of the EU, the UN or the US. This is said to lead to risk aversion in the banking sector when dealing with NPOs operating in those jurisdictions.

39. As a consequence of de-risking, respondents in this sector indicated that where they were able to obtain access to payment accounts, they were spending more time getting transactions processed, while being unaware of the systemic drivers behind the decisions made by institutions to delay these transactions. Respondents furthermore reported that these difficulties can lead to significant delay in programme delivery (especially in the context of humanitarian operations), or even programme closures.

40. To overcome these challenges, respondents indicated they resorted to a number of 'workarounds' that included carrying cash across borders into conflict areas, using personal bank accounts for transferring and receiving funds, or resorting to the services of money transfer businesses.

Businesses operating in the diamond trade

41. Individuals and businesses operating in the diamond trade represented a significant proportion of the submissions to the Call for Input. Respondents in that category reported the following:

- Respondents claimed they had been denied access to bank accounts, including saving accounts and business accounts.
- Access to other financial products for which access appears to be denied also included credit card, loans, mortgage (for both private and business use) and overdraft facilities. Several respondents furthermore indicated that high rates and increasing fees had been imposed on them.
- They reported that no explanation was provided to explain these decisions, but many claimed the main reason behind these decisions was a wholesale de-risking of the sector, which is associated with high ML/TF risks.

42. In terms of impact, respondents indicated that de-risking decisions affected their business significantly, with fewer banks accepting business relationships with them. They referred to fines from suppliers because of delayed in payments. This was deemed to have an impact on the competitiveness of the sector worldwide.

43. Most of the respondents indicated that they could not appeal the decisions and on rare occasions where a review was made possible, the maintenance of the business relationship was offered in exchange of much higher fees.

44. Most of the respondents indicated they were not able to find an alternative channel to access financial services. When alternatives were found, they included the opening of accounts in another jurisdiction either in the EU, but mostly in a third country (e.g. India or Dubai), the use of PSPs or the use of a forex account. Several respondents indicated they used cash payments as temporary workarounds.

3.5. Issues reported by individuals

45. Reflecting some consumers' views, the EBA received input from one Member State's ombudsman. The respondent indicated that in the last seven years, it had received a number of complaints pointing to ongoing difficulties for certain categories of individuals (e.g. asylum seekers, individuals from jurisdictions under embargo or similar measures, but also third country nationals with a residence permit) in opening or maintaining bank accounts. However, the respondent did not indicate whether, and to what extent, the transposition date of the Payment Accounts Directive (PAD) in 2018 had changed this observation. Difficulties encountered by third country nationals to access financial services was also pointed out, in the same Member State, by a respondent that is a consumers' association representing users of financial services.

46. Another group of respondents were those individuals who claimed to be 'accidental Americans' (i.e. customers to whom the US Foreign Account Tax Compliance Act – FATCA applies by decision of the US authorities). Respondents in this category reported the following:

- In decisions made to de-risk them, clear reference was made to FATCA requirements. One respondent indicated being told explicitly that the US requirements were too burdensome and that US sanctions were too important.
- Respondents referred to denied access to bank accounts, mortgages, loans and/or have experienced restrictions on bank accounts, such as limitations imposed on the savings account and restrictions in accessing some investment products and life insurance policies.

4. Rationale provided by CIs and FIs that make decisions to de-risk particular categories of customers

47. Turning to the institutions that make decisions to de-risk some of their customers (that include CIs and PIs/EMIs), those that submitted their contributions to the Call for Input reported that they refuse to onboard new customers or make decisions to offboard existing customers in accordance with their AML/CFT obligations, and that they do not de-risk entire categories of customers. They indicated they would typically de-risk customers that belong to the following categories:

- **Customers with links to jurisdictions that are associated with higher ML/TF risks.** Jurisdictions associated with higher risks include 'high-risk third countries' as identified by the European Commission as having strategic deficiencies in their AML/CFT regime pursuant to Article 9(2) of AMLD and for which enhanced due diligence (EDD) is required under AMLD. They also include those jurisdictions that give rise to particular ML/TF concerns or risks but are not included on the Commission's list. Customer groups most affected in this category are mostly legal entities (including NPOs) operating in or having business relationships with these jurisdictions, but also individuals from these jurisdictions (e.g. asylum seekers).
- **Customers that fall within the scope of US legislation.** Customer groups in this category are so-called 'accidental Americans' (i.e. customers to whom the US Foreign Account Tax Compliance Act – FATCA applies). CIs offering USD clearing also report that they cannot conduct business with individuals or entities that are listed under the US sanction regime (that can differ from the sanction regime applied in the EU or the UN).
- **Customers who are politically exposed persons (PEPs)** and require the application of EDD measures under EU law.
- **Customers that are obliged entities under the AMLD** and are associated with perceived higher levels of inherent ML/TF risks or AML/CFT systems and controls vulnerabilities. Those firms include for instance those that offer products and services that may benefit from exemptions from CDD requirements, such as anonymous prepaid cards or occasional transactions below the monetary CDD threshold or those that belong to categories flagged as presenting high ML/TF risks by the European Commission in its Supranational Risk Assessment (SNRA), EU NCAs and MS governments. Customer groups most affected in this category are Virtual Asset Service Providers (VASPs), PI/EMIs, bureaux de change, respondent banks, gaming operators and wealth managers.

- **Customers that provide products or services that involve significant cash transactions.** Customers groups most affected in this category comprise for instance customers in cash-intensive business, such as diamond dealers, money remitters, car traders, hairdressers or coffee shops.
- **Customers with an unusual business model,** or a business model otherwise associated with higher ML/TF risk or that involves complex legal structures. In certain instances, some businesses are deemed to lack transparency, for example because the identification of the firm's customers' Ultimate Beneficial Owner (UBO) is complex. Other businesses in this category may process fast or potentially anonymous transactions, making the traceability of funds and customers ID more difficult, such as gaming operators or VASPs. Some CIs and FIs also recognised that they at times find it difficult to understand the business model of NPOs, especially those whose set-up is very complex, with trustees and multiple areas of activities and beneficiaries that can be all over the world, including in jurisdictions associated with higher ML/TF risks, as described above.

48. To a large extent, the customers' groups for which CIs and FIs indicated they would consider not entering into or ending a business relationship because of ML/TF-related concerns match those categories of respondents that contributed to the Call.

5. The EBA's assessment of the key drivers, the scale and impact of de-risking

49. On the basis of the input provided in the context of the Call for Input and of additional sources of information,²⁸ the EBA conducted its own assessment of the drivers of de-risking in the EU and the impact de-risking has on the stability and effectiveness of the EU's financial system, and on the effectiveness of the fight against financial crime.

5.1. The EBA's assessment of the key drivers of de-risking

50. While in their responses to the EBA's Call for Input institutions indicated that they do not de-risk entire categories of customers but instead apply a sound individual risk management in line with their AML/CFT obligations, input provided by those affected by de-risking, information provided by NCAs and additional information sources suggests that this is not always the case.

51. From the responses received, and its broader work on de-risking, the EBA identified the following key drivers of institutions' decisions to de-risk customers:

- ML/TF risks exceed institutions' ML/TF risk appetite and give rise to legal as well as reputational risks
- Lack of expertise by institutions in specific customers' business models
- Cost of compliance

These drivers are similar to those identified in existing reporting on de-risking, such as that published by the FATF or the World Bank. The drivers are not mutually exclusive and in practice are very often combined.

ML/TF risks exceed institutions' ML/TF risk appetite and give rise to legal/reputational risks

52. When identifying ML/TF risk and as set out in the EBA's ML/TF risk factor guidelines, institutions are required to refer to different sources of information, which include the European Commission's supranational risk assessment (SNRA), national risk assessments, and information

²⁸ [FATF clarifies risk-based approach: case-by-case, not wholesale de-risking](#), October 2014; FATF, [Drivers for "de-risking" go beyond AML/CFT](#), 2015; FATF, [Mitigating the Unintended Consequences of the FATF Standards](#), 2021; John Howell & Co. Ltd, [Drivers & Impacts of Derisking](#), a study for the Financial Conduct Authority, 2016; CoE, [MONEYVAL Report](#) on 'De-risking within Moneyval states and territories', 2015; Basel Committee on Banking Supervision, [Guidelines](#) on Sound management of risks related to money laundering and financing of terrorism, 2014 (updated in 2020); World Bank report, [The Decline in Access to Correspondent Banking Services in Emerging Markets: Trends, Impacts and Solutions](#), 2018.

originating from AML/CFT regulators. Across these sources of information, specific sectors or categories of customers, such as PIs, EMLs, businesses dealing with virtual currencies, gaming operators, businesses generating high volumes of cash, NPOs, or services such as correspondent banking, have been identified as giving rise to higher ML/TF risks. These sources of information can furthermore include lists of jurisdictions associated with higher risks, for instance the European Commission's list of third countries that present strategic deficiencies in their AML/CFT regimes, or those identified by the FATF in Mutual Evaluation Reports or through inclusion on the FATF's 'grey list' or 'black list', as having significant AML/CFT deficiencies.

53. In many instances, the ML/TF risks associated with customers falling into either category exceed institutions' ML/TF risk appetite and give rise to legal and reputational risks that institutions are not prepared to accept. In those situations, institutions appear to adopt a conservative approach and may de-risk such customers with common characteristics (e.g. those in higher ML/TF risk jurisdictions, including those operating in jurisdictions with weaker AML/CFT supervisory and regulatory frameworks), irrespective of mitigating factors.

Lack of understanding by institutions of specific customers' business models

54. Lack of understanding by institutions of specific customers' business models can also lead institutions to refuse to enter into or maintain a business relationship. For instance, institutions reported in the EBA's Call for Input that they could refuse to onboard customers whose business model they do not understand, as this may make it difficult to determine whose identity should be established and verified, and where the ML/TF risks lie. Respondents indicated that they lack for instance the expertise to understand the way NPOs operate (i.e. a model based on trustees and beneficiaries located in multiple jurisdictions, etc.), or that they do not have enough knowledge to deal with gaming operators or FinTech firms, many of which are not (yet) regulated and supervised.

Cost of compliance

55. The cost of compliance is also a key driver of de-risking. For instance, dealing with customers with links in jurisdictions presenting higher ML/TF risks will entail a requirement for enhanced steps in the monitoring of cross-border transactions, including enhanced scrutiny of customers' relationships and their network of transactions.

56. Moreover, higher capital requirements and higher liquidity thresholds appear to have led institutions to adapt their customers' acceptance policies, and to assess carefully the cost of compliance against profitability.

5.2. Scale of de-risking

57. As explained in the chapter presenting the methodology, the EBA considered the input received through the Call alone was insufficient to assess the scale of de-risking the EU comprehensively. Therefore the EBA complemented the information provided in the content of the Call with the information gathered as part of the EBA's work and exchanges with its standing committees.

58. The scale of de-risking cannot be quantified, as no comprehensive statistics are currently available. Furthermore, it is likely that those affected by de-risking do not always submit complaints or make their cases known. As a result, many instances of de-risking may go unreported.

59. Nevertheless, information available to the EBA suggests that de-risking occurs across the EU. This is evidenced by the responses received to the EBA's questionnaire prepared for the Opinion on ML/TF risks, where the EBA found indications that de-risking had been identified across the EU by the vast majority of CAs responsible for the AML/CFT supervision of credit institutions, PIs and EMIs.²⁹

60. Moreover, discussions at the level of standing committees confirmed that de-risking occurs in the great majority of Member States, affecting a great diversity of customers, although to varying degrees. Competent authorities suggested that de-risking in those cases was often unwarranted. For instance,

- in jurisdictions where credit institutions are relying significantly on correspondent banking relationships to offer certain services to their customers, CAs reported concerns related to decisions of correspondent banks in other jurisdictions to terminate the business relationships with national respondent banks on account of their location, rather than on account of their individual risk profiles. This was the case in particular in Member States whose approaches to AML/CFT supervision and enforcement, or levels of compliance with applicable AML/CFT rules, were perceived to be uneven, for example because of recent ML/TF scandals involving local banks or because of recent adverse findings in the context of FATF or Moneyval Mutual Evaluations. CAs from those MS noted that what they considered to be unwarranted de-risking continued even after significant reforms had been implemented, as negative perceptions persisted. These findings are in line with reports relating to a decline in correspondent banking globally.³⁰
- In jurisdictions where a large number of PIs/EMIs are operating, CAs shared evidence of multiple, and in their view unwarranted, closures by banks of accounts of PIs/EMIs. This confirmed a trend of de-risking affecting PIs/EMIs, in the EU and worldwide³¹. The EBA furthermore gathered evidence from CAs' practical experience of Article 36 of PSD2 that the provision requiring CIs to notify their NCAs when a PI/EMI account is rejected appear to be applied inconsistently across the EU. In particular, the EBA received indications that whereas some PIs/EMIs that contributed to the Call for Input indicated their accounts were rejected, this was not reflected in the notifications received by NCAs. NCAs also suggested that the purpose of the notification process was not entirely

²⁹ EBA [Opinion](#) of the European Banking Authority on the risks of money laundering and terrorist financing affecting the European Union's financial sector ("The Opinion on ML/TF Risks").

³⁰ World Bank report, [The Decline in Access to Correspondent Banking Services in Emerging Markets: Trends, Impacts and Solutions](#), 2018

³¹ The World Bank Group, [An Analysis of Trends in Cost of Remittance Service: Remittance Prices Worldwide Quarterly](#), Issue 36, December 2020; FSB, [Stocktake of remittance service providers' access to banking services](#), 2018.

evident to them, and that as there was no standard format or process for those notifications, the required content and deadlines were unclear. This suggests that the provision, as currently drafted, gives rise to divergent interpretations. Another issue raised was that the scope of the Article 36 was limited to refusal to onboard but did not include the equally significant offboarding of existing customers.

- Several CAs reported to the EBA that the issues experienced by ‘accidental Americans’ have been brought to the attention of their national authorities. The EBA also notes that the issue has also been brought to the European Parliament’s attention, in the form of petitions submitted to the European Parliament³² and subsequent debates³³ and resolution³⁴ at the Parliament’s level. The European Parliament in turn has raised the issue at the level of the Commission.³⁵ The EBA notes on that matter that the European Commission made clear that a bilateral agreement between EU Member States and the United States implementing the Foreign Accounts Tax Compliance Act (FATCA) was not within the competence of the EU, unless a breach of Union law was found. The Commission indicated in that respect that it had so far found no evidence of violation of the EU legal framework.³⁶
- Several CAs confirmed that de-risking of NPOs also occurred increasingly in their jurisdictions, and suggested that this was largely unwarranted. Work carried out at FATF level also echoes similar concerns, notably in relation to the application of FATF Recommendation 8 and its current work addressing ‘undue targeting of NPOs through non-implementation of the FATF’s risk-based approach’.³⁷
- Some CAs furthermore reported regular complaints received from particular types of customers, such as staff of embassies and/or consular representations from third countries (including but not exclusively from third countries presenting high ML/TF risks), diamond traders, gambling operators, who claim they are affected by de-risking decisions that apply to the entire categories of customers they belong to.

61. These trends are confirmed by the EBA’s work carried out as part of the Consumer Trends Report (CTR)³⁸ that showed that de-risking was flagged as one of the main issues affecting consumers. A large majority of CAs in this context reported many complaints from consumers who claimed

³² Petition [1088/2016](#); Petition [1470/2020](#); Petition [0394/2021](#); Petition [0323/2021](#)

³³ EP, [Public Hearing](#) on FATCA and its extraterritorial impact on EU citizens, October 2019

³⁴ European Parliament [resolution](#) on the adverse effects of the US Foreign Tax Compliance Act (FATCA) on EU citizens and in particular ‘accidental Americans’ ([2018/2646\(RSP\)](#))

³⁵ Question for oral answer [O-000053/2018](#) to the Commission on The adverse effects of FATCA on EU citizens and in particular ‘accidental Americans’, 2018.

³⁶ [Written answer](#) given by Mr Gentiloni on behalf of the European Commission to European Parliament’s Question reference: E-000816/2020, April 2020.

³⁷ FATF, [Combating the abuse of NPOs – Recommendation 8](#); FATF, [High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards](#), October 2021.

³⁸ EBA [Consumer Trends Report](#), REP/2021/04.

they had been denied access to a basic payment account based mainly on AML/CFT grounds. Consumer associations also noted a risk of financial exclusion in that regard.

5.3. Impact of de-risking

62. The EBA notes that while the impact of de-risking on different categories of customers varies, de-risking can have a detrimental impact on the achievement of EU's objectives. For instance,

- A decline in correspondent banking may affect the ability to send and receive international payments in entire regions, or drive some payment flows underground.³⁹ Loss of access to the correspondent banking system can lead to a loss of access to dollar clearing and trade, which in turn impacts the national economy, thus affecting market stability;
- When PIs/EMIs lose access to accounts, this may lead to severe business disruptions and ultimately to business closure, thus affecting competition and potentially innovation. The EBA further notes that respondents to the call for input suggested that they had been de-risked by CIs not because of ML/TF risk, but because they were direct competitors in relation to their products and services offering, including in providing innovative payment solutions;
- Legitimate customers who are individuals can become financially excluded when they are prevented from accessing financial services, thus affecting market integrity and consumer protection. The CTR in that regard stressed that consumer associations highlighted that in the current world where more and more transactions are digitalised and the acceptance of cash declines, the need to access a bank account is essential. Providing access to at least basic financial products and services is a prerequisite for the participation in modern economic and social life. Many entities/individuals have in that respect claimed that, after having been offboarded, they were unable to secure alternatives to access financial services in the EU, or were only able to access these services at an increased cost, raising concerns from a consumer's protection perspective.
- In the case of NPOs, de-risking can have a severe impact on the delivery of international aid in conflict zones where the populations are in great need of humanitarian assistance.

63. Furthermore, with regard to the EU's objective of fighting financial crime and maintaining the integrity of the financial system, in its three successive Opinions on ML/TF risks the EBA underlined its concerns, in particular in cases where customers affected by de-risking may resort to alternative payment channels in the EU and elsewhere to meet their financial needs. As a

³⁹ Basel Committee on Banking Supervision, [Revised annex on correspondent banking](#).

result, transactions may no longer be monitored, making the detection and reporting of suspicious transactions and, ultimately, the prevention of ML/TF more difficult.

64. This is exacerbated by customers who have been de-risked moving from the banking sector into other segments of the financial sector to meet their financial needs. These other sectors include those that have been identified, in the SNRA for instance or in EBA's biennial Opinion on ML/TF risks, as presenting higher ML/TF risks as a result of their business model, or that have raised concerns in relation to the quality of their AML/CFT controls.

65. In light of the above, the EBA considers that unwarranted de-risking is a significant issue across the EU, with a potentially significant adverse impact on the EU financial system's integrity and stability.

6. Initiatives taken by competent authorities to address de-risking

66. As part of its information-gathering exercise and to inform further the way forward, the EBA reviewed the initiatives that CAs had taken to address unwarranted de-risking and to promote sound ML/TF risk management.

Assessing the scale of de-risking at national level

67. In the context of the EBA's questionnaire prepared for the Opinion on ML/TF risks, the EBA collected evidence that a significant proportion of CAs across the EU had not yet assessed the scale of de-risking in their jurisdiction. However, the majority of these CAs indicated that such an assessment was envisaged in a near future, suggesting that the issue may be of concern to them.

68. At the same time, several CAs across the EU have already performed or initiated in-depth assessments to understand better the reasons for de-risking and the categories of stakeholders most affected in their jurisdictions. This assessment is an important first step to design and implement appropriate measures to address the root causes of de-risking.

Box 1: Conducting a national survey to assess de-risking – On the basis of complaints received from customers affected by de-risking, a competent authority in one Member State initiated a survey at national level, with targeted questions addressed to the key customers groups that appeared to be the most affected, in particular financial markets participants (credit institutions, PIs/EMIs) and private consumers. The aim was to determine the extent of de-risking, the main reasons for de-risking, its impact on financial services' users and to assess the need for regulatory and supervisory actions.

Dedicated guidance addressed to institutions that make decisions to de-risk

69. As suggested above, CIs/FIs may choose not to manage the risk associated with individual business relationships, preferring instead to discontinue business relationships with entire categories of customers. As a result of this practice, certain individuals or entities may be excluded from the financial system. In line with the EBA's risk factors Guidelines⁴⁰ that make clear that the application of a risk-based approach does not require firms to refuse or terminate business relationships with entire categories of customers that are considered to present high ML/TF risk, as the risk associated with individual business relationships may vary, even within

⁴⁰ [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

one category, some CAs have made this message explicit in their guidance to the relevant sectors under their supervision.

Box 2: Inclusion of dedicated provisions on de-risking in guidance to the financial sector – One CA included in its guidance to the financial sector a specific section on de-risking. The section underlines that in applying a risk-based approach to their AML/CFT obligations, institutions should be aware of the importance and benefits of financial inclusion. It further clarifies that a ‘zero tolerance’ approach, or wholesale termination of business relationships with entire categories of customers, without an individual assessment and consideration of the risk posed, and due consideration of the measures that could mitigate such risks, is not consistent with the risk-based approach. The guidance furthermore emphasises that institutions should document fully their rationale for a decision to terminate a business relationship or to cease the provision of a particular product or service. This should include an analysis of the ML/TF risks presented, the additional measures they considered putting in place to mitigate such risks, and the reasons they deemed insufficient, so that such decisions could be reasonably justified.

70. Furthermore, and tackling issues experienced by specific categories of customers affected by de-risking, several CAs have issued dedicated guidance to the financial sector.

Box 3: Dedicated guidance on conducting correspondent banking activities and mitigating the inherent risks therewith – One CA has provided detailed guidance to their supervised entities providing corresponding banking services. While acknowledging the inherent risks of such business relationships, the guidance explains how to manage these risks effectively, at the onboarding stage but also as part of the ongoing monitoring of the business relationship. The guidance also details the situation in which KYCC might be necessary, clarifies the expectations in cases where the corresponding relationship is externalized or where the relationship is built as part of a group supervised by a third country.

Box 4: Targeted communication to the financial sector to ensure financial inclusion of asylum seekers – Following the EBA’s Opinion on the application of Customer Due Diligence Measures to customers who are asylum seekers from higher risk third countries and territories, one CA has issued guidance to the financial sector under their supervision. The guidance explains how the EBA’s Opinion is applicable in the jurisdiction of the Member State, and how institutions are expected to manage risks in dealing with this category of customers.

Ensuring that regulatory expectations are clear for all stakeholders involved in the business relationship

71. In relation to stakeholders from the financial sector affected by de-risking and as evidenced in the identified key drivers of de-risking set out above, de-risking of certain sectors is often caused by the lack of trust in the quality of AML/CFT systems and controls implemented by firms in that sector. As a consequence, improving the level of controls in that sector is an important step.

This could imply increased supervisory activities in the sector and some competent authorities have conducted dedicated activities in that regard.

72. Some CAs have for instance initiated specific projects, such as innovation facilitators,⁴¹ that aim to support newcomers on the financial market and help them to clearly understand and implement the regulatory expectations that apply to them. Opportunities for enhanced dialogue between industry and competent authorities can also support a common and more in-depth understanding of opportunities and risks presented by innovative products, services and business models and supervisory expectations. Other initiatives include the establishment within the CA of a dedicated contact point (i.e. a ‘relationship manager’) to ensure a good and reliable channel of communication between the supervisor and the newly supervised entities.

Establishing multi-stakeholder dialogue to mitigate financial exclusion

73. Many CAs across the EU have established dedicated frameworks at national level (meetings, forums, consultative bodies) to reach out to the private sector. To mitigate financial exclusion of legitimate customers, some CAs have used these frameworks to discuss key issues related to de-risking also involving, in some instances, customer groups most affected.

Box 5: A dedicated consultative body to ensure regular dialogue – One AML/CFT CA has set up a consultative body that gathers AML/CFT supervisors, other relevant authorities such as the Ministry of Finance and the FIU and various representatives of the sector(s) under its supervision. This consultative body meets on a regular basis, is closely involved when developing guidance to the sector(s) and is the forum where practical issues are discussed and clarified, for instance correspondent banking, financial sanctions, KYC, etc. This forum has been instrumental for instance in initiating an inter-ministerial workstream led by the Ministry of Finance and the Ministry of Foreign Affairs to ensure access of legitimate NPOs to financial services. The workstream facilitated a fruitful dialogue between banks and NPOs so that banks can understand better the ways NPOs operate, and so that NPOs understand banks’ requirements towards them.

74. Several CAs have furthermore contributed to initiatives led by the private sector, sometimes in partnership with public authorities, to mitigate the impact of de-risking in certain sectors.

Box 6: Participation in a project to increase confidence of correspondent banks in the banking sector in this jurisdiction – In relation to CBRS for instance, one CA in a jurisdiction particularly affected by a decline of CBRs contributed to a project led by a banking trade association in partnership with relevant national authorities. The project involved a variety of activities, such as the organisation of ‘roadshows’ and meetings with regulators, government officials, correspondent banks, both in Europe and the United States, with the aim to improve the confidence of correspondent banks in the banking sector in this jurisdiction.

⁴¹ Regulatory sandboxes and innovation hubs. For information about the joint-ESA work to promote greater coordination and collaboration between national schemes, see further information about the European Forum for Innovation Facilitators: <https://www.eba.europa.eu/financial-innovation-and-fintech/european-forum-for-innovation-facilitators>

Box 7: Supporting the private sector’s initiatives to tackle financial exclusion of asylum seekers

– One CA indicated it actively participated in the preparation of a guide intended for asylum seekers and refugees issued by a banking trade association. The guide explains to asylum seekers how to open an account and provides examples of the documents that will be accepted. The guide is meant to be made available in accommodation centres and will be made available in Arabic, French, Somalian, Georgian, Albanian as well as English.

Box 8: Co-drafting of guidance to the sector on foreign diplomatic missions

– One CA’s contribution in drafting guidance prepared jointly by trade associations and Ministry of Foreign Affairs aimed at highlighting poor and good practices in the ways credit institutions deal with foreign diplomatic missions. Another CA reported it was currently contributing to a mechanism (possibly an MoU between the banking sector and Ministry of Foreign Affairs) to clarify the expectations of the regulators towards banks providing services to NPOs.

Ensuring an effective application of the right to basic banking accounts in line with AML/CFT requirements

75. In the application of the PAD Directive and the requirement to provide access to a basic payment account for consumers who legally reside in the EU, some Member States have supplemented the transposition of this Directive with dedicated guidance aimed at providing this access in line with AML/CFT requirements, as conducting due diligence on potential customers who do not have a fixed address or standard documentation can present a number of challenges from an M/TF perspective. It is worth mentioning that some Member States have adopted in their legal framework measures to provide access to accounts with basic features also for businesses, which very often mirror provisions of the PAD.

76. However, several CAs have reported difficulties to ensure the balance is maintained between financial inclusion and the application of AML/CFT requirements, and also to clarify in which situations an account with basic features should be rejected or closed. Furthermore, the mechanisms that have been put in place at Member States level to provide access to accounts with basic features foresee in the majority of cases that CIs/FIs, even if obliged by national authorities to provide a payment account to a particular customer, can nevertheless decide, after having taken this customer on board and after a certain period of time, not to maintain the business relationship. Several CAs mentioned in that respect that the mechanisms in place to provide access to accounts with basic feature were unhelpful to maintain financial inclusion.

Ensuring an effective application of Article 36 PSD2

77. As indicated above, discussions with CAs provided indications that Article 36 of PSD2 that requires credit institutions to provide CAs with duly motivated reasons for any rejection of PIs’ payment accounts services, was being applied inconsistently across the EU, in particular due to the imprecisions of the requirement as drafted in law. Some Member States in that respect took

particular steps to ensure payment services have access to payment accounts to perform their business.

Box 9: Measures to promote and ensure competition in payment markets – In one Member State where the PIs/EMIs sector has been particularly affected by de-risking, a streamlined process to facilitate and standardize the notification requirement provided in Article 36 was put in place by the regulator. The process involves a template that credit institutions are required to use to notify CAs when they decide to reject an account. On the basis of the data provided in this context, the regulator was able to gain insight into the most common reasons for rejection and to issue guidance accordingly. This included a statement on the rights of EMIs and PIs to access bank accounts opened with credit institutions, clarifying the ML/TF risks associated with different types of accounts (current account / safeguarding account / payment account) and reminding credit institutions that they are expected to manage ML/TF risks on a risk-sensitive basis. The CA reported that as a result of these initiatives, credit institutions have started to communicate more with the regulator, including before rejecting accounts and that a decline in the number of accounts rejected had been observed.

78. Initiatives taken at Member State level indicate that unwarranted de-risking and the promotion of sound risk management can potentially be tackled through various means that include exchanges with the private sector and/or affected customers' groups, issuing dedicated guidance, or reaching out with other relevant CAs.

7. Conclusion

79. De-risking occurs across all Member States and sectors and affects a great variety of customers of financial services in the EU. It hampers financial crime prevention and financial inclusion efforts. It can also threaten the stability of national financial systems.

80. In light of the adverse impact of de-risking on the EU's financial market objectives, the EBA considers that financial services authorities and the co-legislator need to step up efforts to ensure that the root causes of unwarranted de-risking are addressed.

81. The EBA has since 2016 issued a number of instruments to help institutions manage ML/TF risks associated with individual business relationships in an effective manner by setting clear, regulatory expectations of the steps that institutions should take. In view of the key drivers of de-risking identified above, the effective application of these instruments could contribute to reducing significantly unwarranted de-risking and strengthening institutions' financial crime controls. These existing provisions are set out in the table hereafter.

Existing provisions in EBA instruments that contribute to address key decision drivers of de-risking

#1 Key Driver: ML/TF risks exceed risk appetite

Provisions addressed to institutions

The revised EBA's *ML/TF Risk Factors Guidelines*⁴² set out the risk factors institutions should consider when assessing ML/TF risk at the level of the institution and at the level of individual customers and groups of customers, and how institutions should be managing those risks, thereby support institutions' implementation of sound ML/TF risk management policies and procedures. The following provisions directly target some of the root causes of de-risking identified in this report:

- a section on **high-risk third countries** (GL 4.53 to 4.57). The GLs make a clear distinction between compliance with the European financial sanctions regime and compliance with Article 9 of Directive (EU) 2015/849 that concern countries identified by the Commission as having strategic deficiencies in its AML/CFT regime. They also support institutions' assessment of country risk in general by highlighting, for example, the sources that institutions can use to assess levels of tax transparency, and corruption and other predicate offences, and set out, in sectoral guidelines, which country ML/TF risk factors are particularly pertinent in determining the ML/TF risk associated with individual relationships;
- a section on **PEPs** (GL 4.48 to 4.52) that makes clear that firms should ensure that the measures they put in place to comply with the AMLD and with these guidelines in respect of PEPs do not result in PEP customers being unduly denied access to financial services;
- **sectoral guidelines** that target specific segments of the financial market that are affected by de-risking and that, if applied effectively, should improve robustness of AML/CFT controls and increase confidence in each segment of the financial sector and conversely, help institutions that offer financial services to others assess the extent to which their individual customers present ML/TF risks. Sectoral guidelines 8 for **correspondent relationships** for instance provide detailed guidance to help firms comply with their obligations under the AMLD in an effective and proportionate way. Guideline 10 is addressed to **EMIs**, Guideline 11 to **money remitters**.

Instruments addressed to CAs

The EBA's *Opinion on ML/TF Risks*⁴³ issued in 2021 included a proposal that CAs should consider how the level of controls could be improved in some sectors that are particularly affected by de-risking due to the lack of trust in the quality of AML/CFT systems and controls implemented by firms in that sector. This may include increased supervisory activities in the sector or additional guidance to the

⁴² [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁴³ EBA [Opinion](#) of the European Banking Authority on the risks of money laundering and terrorist financing affecting the European Union's financial sector ("The Opinion on ML/TF Risks").

sector. In the revised EBA's *Risk-Based Supervision Guidelines*,⁴⁴ CAs are expected to work closer with some of the sectors particularly affected by de-risking (notably PIs/EMIs) to ensure their AML/CFT controls are improving, through on-site inspections and thematic reviews, in order to increase confidence in the sector.

#2 Key Driver: Lack of understanding by CIs/FIs of specific customers' business models

Provisions addressed to institutions

In relation to customers that offer services related to virtual currencies, the EBA *ML/TF Risk Factors Guidelines*⁴⁵ contain a section addressed to credit institutions (GL 9.20 to 9.24) that help them identify and assess the risks associated with the business model of VASPs.

Instruments addressed to CAs

The EBA is supporting competent authorities in monitoring FinTech developments, notably those that facilitate new products, services and business models. Information can be found via the EBA's FinTech Knowledge Hub.⁴⁶ As regards AML/CFT risks in particular, the EBA is supporting relevant authorities in exchanging information on market developments, thereby supporting the monitoring of the suitability of the existing perimeter of AML/CFT obligations pursuant to EU law. In particular, the EBA notes that the AMLD5 extended the list of obliged entities to include providers engaged in exchange services between virtual currencies and fiat currencies, and custodian wallet providers.⁴⁷ The EBA recommended in January 2019 a further expansion of scope to cover other types of virtual asset service provider (using FATF terminology),⁴⁸ which have been taken into account in the EC's 2021 proposals for the new AML/CFT package.⁴⁹ The EBA continues to encourage competent authorities to monitor the market for new, emerging activities that may pose ML/TF risk in line with the risk-based approach. Indeed, in the EBA *Opinion on ML/TF Risks*, the EBA proposes that CAs familiarise themselves with the technological developments deployed by FinTech in a number of ways, for example, through dedicated training programs for CAs' staff and/or engagements with FinTech and RegTech providers and firms, even if they are not obliged entities.

⁴⁴ [Guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72), EBA/GL/2021/16.

⁴⁵ [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁴⁶ EBA, [Financial Innovation and FinTech](#).

⁴⁷ [Directive \(EU\) 2018/843](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

⁴⁸ EBA [Report on crypto-assets](#), 2019.

⁴⁹ European Commission, Anti-money laundering and countering the financing of terrorism [legislative package](#), July 2021.

#3 Key Driver: Cost of compliance

Provisions addressed to institutions

The EBA *ML/TF Risk Factors Guidelines*⁵⁰ make clear in GL 4.10. that when firms consider assessing ML/TF risk associated with a customer, they can opt for offering only basic financial products and services, which restrict the ability of users to abuse these products and services for financial crime purposes.

Furthermore, the EBA's Opinion on CDD for customers who are asylum seekers⁵¹ sets out how institutions can adjust their basic payment accounts offerings, should ML/TF risk dictate in line with the provisions in the PAD.

82. There are, however, a number of areas where the EBA considers that CAs could do more to support the effective implementation of provisions in existing EBA instruments going forward and the EBA considers that to address unwarranted de-risking, further action by NCAs and the co-legislators is required to support the effective implementation of provisions in the EBA's existing instruments and to address provisions that may be conflicting across Level 1 instruments going forward. These further steps are set out in the Opinion to which this Report is annexed.

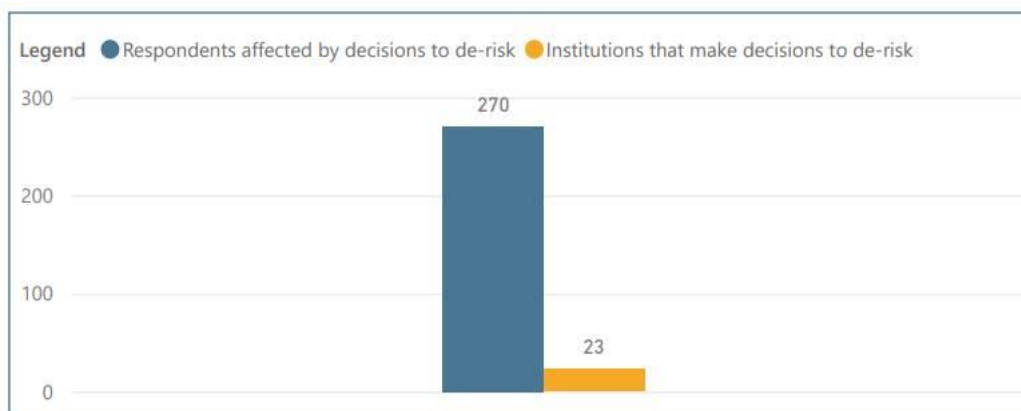
⁵⁰ [Guidelines](#) on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁵¹ [Opinion](#) of the European Banking Authority on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories, EBA-Op-2016-07

Overview of the contributors to the EBA's Call for Input

This annex provides a general overview of the respondents that contributed to the Call for Input on de-risking. The distribution of respondents by their role in the 'de-risking' process is depicted the figure below.

Figure 1: Distribution of respondents by their role in the 'de-risking' process



As Figure 1 depicts, the distribution of responses shows that the vast majority of the respondents originated from individuals and entities that are affected by de-risking, rather than those that take de-risking decisions. While the EBA had expected a somewhat uneven distribution due to the nature of the Call, the extent of the unevenness was taken into account in the analysis of the responses received, as explained in the methodological chapter.

As depicted below, the distribution of respondents that indicated they make decisions to de-risk shows that those respondents consisted not only of credit institutions (CIs), but also payment institutions (PIs) and electronic money institutions (EMIs). On the other hand, the distribution of respondents according to their categories that are affected by decisions to de-risk, shows a great diversity.

Overview of the categories of respondents that provided input to the Call for Input



Institutions that take decisions to de-risk:

- Credit Institutions (incl. trade associations)
- Pls/EMIs (incl. trade associations)



Institutions affected:

- Credit institutions (incl. respondent banks)
- Pls/EMIs (incl. trade associations)
- Bureaux de change
- VASPs/FinTechs (incl. trade associations)
- Fund manager/trust providers



Other legal entities affected:

- NPOs (incl. coalition of NPOs)
- diamond/precious stones traders
- Car dealers, art dealers, other traders in goods services



Individuals affected:

- 'Accidental americans'
- Non-EU residents



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