



Financial Intelligence Unit of
Latvia

**Guidelines for Risk Management of Politically
Exposed Persons, their Family Members, and
Close Associates**

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Introduction

Financial Intelligence Unit of Latvia has developed guidelines for risk management of politically exposed persons, their family members, and close associates for subjects of the Law. PEP are considered to be persons of increased ML risk according to their influence in the public sector which can be used for their private benefit. Therefore, there is increased possibility that PEP may use services of subjects of the Law (including financial institutions, providers of gambling services, etc.) to launder money derived from crime, e.g. in the result of corruption.

Management of ML/TF/PF risks connected with PEP, their family members or close associates is a significant part of every subject's of the Law internal control system for prevention of ML/TF/PF. At the same time, it has to be taken into consideration that the requirements relating to PEP are of a preventive and not criminal nature, and should not be interpreted as stigmatising PEP as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of the determination that he or she is a politically exposed person is contrary to ML/TF/PF prevention legal regulation.¹

Financial Intelligence Unit has developed these guidelines to enable the subjects of the Law to manage effectively ML/TF/PF risks arising from a business relationship with PEP or PEP family members or close associates, and to apply appropriate customer due diligence measures on grounds of risk-based approach. These guidelines have informative character and are designed to be used as an additional management tool.

1. PEP: Concept Explanation

- 1.1. When establishing a business relationship with a customer, the subject of the Law shall determine, by carrying out risk-assessment based measures, whether the customer or the beneficial owner is a politically exposed person or a family member of a politically exposed person, or a person closely associated to a politically exposed person.² The definitions of PEP or PEP family member or a person closely related to PEP are defined in the Article 1 of the Law.
- 1.2. Politically exposed person – a person who in the Republic of Latvia, other Member State or third country holds or has held a significant public office, including a higher official of the public authority, a head of the State administrative unit (local government), the Prime Minister, the Minister (the Deputy Minister or the Deputy of the Deputy Minister if there is such an office in the relevant country), the State Secretary or other official of high level in the government or State administrative unit (local government), a Member of Parliament or a member of similar legislation entity, a member of the management entity (board) of the political party, a Judge of the Constitutional Court, a Judge of the Supreme Court or of the court of other level (a member of the court authority), a council or board member of the Court of Auditors, a council or board member of the Central Bank, an ambassador, a chargé d'affaires, a high-ranking officer of the armed forces, a council or board member of a State capital company, a head (a director, a deputy director) and a board member of an international organisation, or a person who holds equal position in such organisation.³
- 1.3. The list of positions provided is not exhaustive and cannot be considered as being complete. Similarly, FATF providing explanation of PEP definition, demonstrates the list of positions only as an example.⁴ Accordingly, the subject of the Law, on the basis of its ML/TF/PF risk assessment, has to define politically significant positions that confer PEP status to a client resulting in a customer due diligence requirements. The list of politically significant positions defined by the subject of the Law must not be narrower than the non-exhaustive list specified by the Law. In this respect, it is important to bear in mind that when providing services to persons from other countries, it is important to take into account that positions' titles and

¹ Recital 33 of the Preamble to the 4 AML Directive.

² Article 25(1) of the Law.

³ Article 1(1)18) of the Law.

⁴ The FATF Recommendations, p. 123. Pieejams: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

their effect may vary from one country to another, depending on the national legal system and legal traditions. When providing services to persons from abroad, it is necessary to identify politically significant positions also in the specific foreign countries taking into consideration, for example, differences between politically significant positions in Latvia and in federal countries.

- 1.4. When determining the list of politically significant positions, the subject of the Law must take into consideration the risks related to concrete positions mainly viewed in the context of the phenomenon of political corruption. Political corruption occurs when top government officials legislate or develop and implement policies in their private interests, namely, to hold their power, increase their wealth or enhance their influence. Corruption most often occurs where the public and private sectors collide. Corruption is bribery or any other act of a public official aimed at gaining undue advantage for himself/herself or other persons through exercising of his/her official authority or through exceeding of his/her official authority.⁵
- 1.5. Accordingly, the subject of the Law must list all positions defined in the internal control system in a client due diligence questionnaire so that the client is able to answer whether he/she is PEP within the understanding of the subject of the Law. At the same time, the client must be able to record another position undefined by the subject of the Law if the client considers himself/herself as being PEP whose position is not defined in the subject's of the Law internal control system. In this respect, it is important to bear in mind that when providing services to persons from other countries, it is important to take into account that positions titles and their effect may vary from one country to another, depending on the national legal system and legal traditions.
- 1.6. A politically exposed person is considered to be a person who occupies or has occupied an important public position, namely, a person who occupies a senior-level position. The purpose of the definition of a politically exposed person is not to cover the persons occupying middle-ranking or junior positions.⁶ At the same time, it must be taken into consideration that persons of lower or middle-ranking positions may act in the interest of PEP to avoid ML/TF/PF preventive measures. Consequently, the less important public functions assigned to a person, have to be taken into consideration as a customer risk factor in the overall risk assessment of a business relationship.⁷

2. PEP Family Member and Close Associate: Concept Explanation

- 2.1. Being aware of their status and additional investigative measures to be applied by the subject of the Law to PEP, corrupt officials and other politically exposed officials may seek covert methods of gaining personal profit and control of assets while maintaining control over criminal assets. To achieve these purposes, PEP can use his/her family members or other close associates. Consequently, PEP family members and persons closely related to PEP are subject to the same due diligence and monitoring requirements as ones applied to PEP.
- 2.2. PEP family member is a person who is related to PEP as:
 - a) spouse or equivalent person. A person is recognised to be a person, which is equal to a spouse, only when the laws of the relevant country stipulate such status;
 - b) a child or child of a spouse of equivalent person of a politically exposed person, the child's spouse or equivalent person;
 - c) a parent, grandparent, or grandchild;

⁵ Article 1(1) of the Law on Corruption Prevention and Combating Bureau.

⁶ The FATF Recommendations, p. 123. Available: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

⁷ The FATF Guidance: politically exposed persons (recommendations 12 and 22), p.10. Pieejams: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

- d) a brother or sister.⁸
- 2.3. Taking into consideration the content of PEP family member definition, the subject of the Law could be in need of expanding its range of persons that are substantially considered to be family members (such as an actual cohabiting partner) but formally are not included in the list of family members. An exhaustive list of PEP family members included in the definition, has to be taken into account as well when providing services to persons from foreign countries (non-residents) with cultural traditions and family models that differ from the European traditions and family model.
- 2.4. A person, which is closely related to a politically exposed person, is a natural person, if it is known that this person:
- a) has a business relationship with a PEP;
 - b) has another close relationship with a PEP;
 - c) is a shareholder or member of the same company as a PEP;
 - d) is the only owner of a legal arrangement, whereon it is known that it has actually been established for the benefit of a PEP.⁹
- 2.5. It is important to emphasize that “business relationship” mentioned in Paragraph 2.4.a) is not that the same as “business relationship” mentioned in Article 1(1)3) of the Law. Business relationship with a PEP in the context of defining the person who is closely related to a PEP is overviewed in the context of phenomenon of political corruption, i.e. whether persons with business relationship with a PEP are exposed to high corruption risk. Thus, the purpose of this “business relationship” and the purpose of PEP regulation must be taken into consideration.
- 2.6. The subject of the Law by fulfilling a concept of “close relationship” with content in the context of Paragraph 2.4.b) must take into consideration the fact that it does not match criteria mentioned in Paragraph 2.4.a), Paragraph 2.4.c) and Paragraph 2.4.d). Concept of “close relationship” is understood as such relations that can serve as grounds for the PEP to hide his/her abuse of public power for personal benefit by the help of such person. Namely, the persons outside the family (such as friends, girlfriends, lovers), the persons who are in the same political party, public organization as the politically exposed person, and prominent members of trade unions, for example, persons who are well-known to society, are considered to be persons who are closely related to the PEP.¹⁰ At the same time, when an actual cohabiting partner of a politically exposed person is not put on the same level as a spouse and he/she formally does not integrate in the definition of a family member since the laws of the relevant country do not stipulate such status, such cases are also considered to be “close relations”. The fact of existence of “close relations” is the main criterion that may serve as grounds for a PEP to hide the use of public power for personal benefit by the help of such person.

3. Defining the Status

- 3.1. **Method 1:** Customer due diligence process (questionnaires): Main method of defining the status of a PEP, his/her family member, and closely-related person is customer due diligence by performing customer due diligence measures according to requirements mentioned in Article 11.¹ of the Law. In the process of customer due diligence data on customer’s workplace and occupation is obtained and customer is also being asked directly whether he/she matches the status of PEP, his/her family member, and closely-related person. The subject of the Law should list in the customer due diligence questionnaire all the politically exposed positions that are defined in the internal control system and that assigns a customer the status of PEP.
- 3.2. **Method 2:** Customer check in the databases: The subject of the Law performs a customer check in the commercial PEP databases. This check is being performed simultaneously with

⁸ Article 1(1)18¹) of the Law.

⁹ Article 1(1)18.²) of the Law.

¹⁰ The FATF Guidance: politically exposed persons (recommendations 12 and 22), p.12. Available: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

customer due diligence process. The subject of the Law cannot be sure that a commercial database collects information about all PEP, their family members, or closely-related persons. The fact that the person is not included in a commercial database as a PEP, his/her family member, or a closely-related person, cannot serve as grounds for the financial institution to assume that the person is not to be recognised as a PEP, his/her family member, or a closely-related person. Commercial databases are only an additional source of information for a financial institution.

- 3.3. The subject of the law performs customer check also in the publicly available databases. In regards to customers that are Latvian residents a check must be performed in the database of politically exposed persons maintained by the State Revenue Service (database will start its work by the end of 2019) or for example in the database of the state officials declarations. In most countries in the European Union, the officials are obliged to declare their income, property, and family members, and this information is publicly available. Thus the subject of the Law may use the above databases not only to verify whether the customer or its beneficial owner is not to be recognised as a PEP, his/her family member, or a closely-related person, but also to assess the income indicated by such person in the context of the information obtained in the process of customer due diligence. At the same time, it should be taken into account, that in different countries the requirements as to the range of persons subjected to an obligation to declare their income, as well as various requirements for the information to be included in the declaration may differ.
- 3.4. **Method 3:** Customer check in Internet and mass media information resources: Based on client risk an additional check in the process of customer due diligence could be performed in internet and mass media space, for example, in order to verify data provided by customer regarding position and occupation. While information on PEP's family members or a closely-related persons may not be included in databases it could be indicated in press. At the same time, it must be taken into consideration that information, which is reflected on internet and mass media resources may not always be comprehensive and reliable.
- 3.5. The subject of Law by performing measures of the defining the status of a PEP, his/her family member, and closely-related person in all cases should apply Method 1 and Method 2. However, in the cases when customer is exposed to high risk, Method 3 must also be applied.

4. Due diligence and Transaction Monitoring

- 4.1. According to the FATF guidelines for assessing ML/FT/FP risks, the ML/FT/FP risks are When establishing and maintaining a business relationship or performing occasional transaction with a customer, which is a PEP, his/her family member, or closely-related person, the financial institution must perform enhanced due diligence of the customer.¹¹ Requirement of this Law is being fulfilled regardless in which country relevant person takes or has taken significant public position.
- 4.2. In the cases when the subject of the Law by performing measures of the defining status of a PEP, his/her family member, and closely-related person establishes that person had such status in the past (for example customer was some country's parliament deputy 5 years ago), the subject of the Law must perform enhanced due diligence of the customer. In the period of business relation with PEP, PEP family member, and closely-related person duration and changes of status are defined according to the Clause 5 of these Guidelines.
- 4.3. Subject of the Law is not entitled to define requirements for general or simplified customer due diligence for a PEP, his/her family member, or closely related person, however, subject of the Law is entitled to determine various measures in its internal procedures for the enhanced due diligence of the customers and regularity thereof, if subject of the Law establishes risk-reducing or risk-increasing factors. For example, risk-increasing factor is high level of corruption risk in the state where the PEP was in office.

¹¹ Article 25(2)2) of the Law.

- 4.4. Subject of the Law – a legal person – shall receive a consent from the senior management prior to commencing a business relationship, if prior to establishment of a business relationship or during the business relationship, it is detected that the customer or its beneficial owner is a PEP or a family member of a PEP, or a person closely related to a PEP.¹² Compliance of this requirement depends on the size, structure, and operational nature of the legal person. This requirement aims to ensure that the largest possible number of members of the Board are informed about the business relationship with a PEP, his/her family member, or closely-related person, and the legal person in no case launches cooperation with these persons if there is no appropriate internal control system.
- 4.5. The policies and procedures of subject of the Law – a legal person – should clearly define responsibility as to who makes the final decision on launching cooperation with a PEP, his/her family member, or closely related person. Decisions and associated opinions on launching or not launching cooperation must always be documented.
- 4.6. Subject of the Law shall implement and document the risk-assessment based measures for determining the origin of funds and the origin of wealth characterizing the material status of the customer and its beneficial owner, if prior to establishment of a business relationship or during the business relationship, it is detected that the customer or its beneficial owner is a PEP or a family member of a PEP, or a person closely related to a PEP.¹³
- 4.7. Subject of the Law during the business relationship with a PEP, his/her family member, or a closely related person ensures continuous monitoring of customer transactions. When assessing the risk inherent to a business relationship with a PEP, his/her family member, or a closely-related person, should take into consideration at least the following risk factors:
- a) whether the person has business interests, which are associated with the person's public functions;
 - b) whether the person is involved in public procurement procedures and has a significant impact on making the key decisions;
 - c) whether the person is from a country that has significant strategic shortcomings in the system of prevention of ML/TF/PF identified by the FATF or European Union;
 - d) whether the person is from a country which is known to have a high level of corruption;
 - e) whether the person implements the public functions in a sector, which is exposed to high corruption risk (for example, oil and gas extraction, extraction of gold and mining, construction, armament and defence, gambling, etc.);
 - f) whether the person implements the public functions, within which he/she can affect the creation of a system for the prevention of ML/TF/PF, as well as anti-corruption system (such as the head of the Government, the minister who is responsible for the certain field, etc.).

5. Duration and Changes of the Status

- 5.1. The subject of the Law based on a risk assessment, may terminate the application of the customers' enhanced due diligence for a PEP or a family member of a PEP, or a person closely related to a PEP, if:
- a) the PEP has died;
 - b) the PEP does not hold a prominent public office anymore for at least 12 months and business relationship of whom does not cause increased money laundering risk anymore.¹⁴
- 5.2. The subject of the Law should always carry out a risk assessment to understand whether the business relationship with the particular person still causes an increased risk of money laundering, while the subject of the Law, regardless of the risk assessment, is always obliged

¹² Article 25(3)1) of the Law.

¹³ Article 25(3)2) of the Law.

¹⁴ Article 25(5) of the Law.

to keep the status of a PEP, his/her family member, or closely-related person for at least 12 months after the PEP no longer fills a significant position.

- 5.3. When assessing the term for keeping the person's status of a PEP, his/her family member, or closely-related person, takes into account at least the following risk factors:
 - a) duration of the level of impact the person can still keep and influence that was implemented by the person when filling a significant public position;
 - b) whether the previous activities of the person are related in any way to the activities of the person carried out after leaving a significant public position.
- 5.4. Status of a PEP, his/her family member, or closely related person cannot be cancelled automatically; this decision must be made by the senior management within the meaning of the point 4.4. of this guideline. Regarding foreign PEP, his/her family member, or closely related person, the decision on cancelation of the status must be approached with increased attention, due to objective obstacles when assessing the level of impact and influence the person can still keep in his state.
- 5.5. Subject of the Law must acknowledge that PEP, his/her family member, or closely related person status cancelation bears extra risks, as, especially after leaving the office, a corrupt official can start to use proceeds derived from criminal activity, or try to legalize them. In these cases subject of the Law can keep the status of a PEP, his/her family member, or closely related person for unlimited time.
- 5.6. The internal control system of the subject of the Law shall ensure, on the risk assessment basis, a possibility to determine that a customer, who at the time of establishing a business relationship is not a PEP, his/her family member, or closely related person, has become such after the establishment of the business relationship.¹⁵
- 5.7. It is not enough, if subject of the Law verifies the conformity of the customer or its beneficial owner with the status of a PEP, his/her family member, or closely related person only within the establishment of the business relationship. Based on the risk assessment, it is necessary to verify the current customer base from time to time in order to make sure that the customer or its beneficial owner has not obtained the status of a PEP, his/her family member, or closely related person during the business relationship. When defining verification measures and regularity, the subject of the Law should take into account the risk level of the customer's business relationship.

¹⁵ Article 25(2) of the Law.

Table of Abbreviations

4 AML Directive – Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 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

FATF – Financial Action Task Force

Law – Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing

ML – Money laundering

PF – Proliferation financing

PEP – Politically Exposed Person

TF – Terrorism financing