



GUIDELINES ON THE CONCEPT OF POLITICALLY EXPOSED PERSONS

Background regulations: Articles L. 561-10 1°, R. 561-18 and R. 561-20-2 of the Monetary and Financial Code and Articles 321-147, 3202-0, 325-22 and 325-62 of the AMF General Regulation

By the terms of Article L. 561-10 1° of the Monetary and Financial Code, persons subject to the prevention of money laundering and terrorist financing obligations must implement additional due diligence measures with regard to politically exposed persons (hereinafter referred to as “**PEPs**”). The purpose of these guidelines is to assist collective investment management companies,¹ French collective investments² when they are self-managed, branches of European management companies of UCITS and AIF mentioned in Articles L. 532-20-1 and L. 532-21-3 of the Monetary and Financial Code, financial investment advisors and crowdfunding investment advisors (hereinafter the “obliged entities”) in carrying out these obligations.

Maintaining a relationship with holders of important positions and/or their relatives or close associates exposes the obliged entity to particular risks in terms of financial support for terrorism, attempted bribery or the movement of capital obtained by illegal means for money laundering purposes.

Politically exposed persons may, using their influence or other means available to them on account of their positions, carry out their money laundering transactions themselves or use intermediaries to carry out transactions on their behalf (using front companies, offshore centres and non-financial professions), most often with an international dimension.

In response to this higher risk, the regulations expand the due diligence measures that apply to any client to include additional due diligence measures for a **PEP client** or **PEP beneficial owner**:

- The decision to enter into or maintain a business relationship with a PEP or a person whose beneficial owner is a PEP may only be made by a member of the executive body or any individual authorised by the executive body;
- To assess the risks of money laundering and terrorist financing, the source of wealth and funds involved in the business relationship or transaction must be determined;
- The due diligence measures specified in Article R. 561-12-1 of the Monetary and Financial Code, i.e. those ensuring that transactions carried out in connection with a business relationship are consistent with the up-to-date knowledge of the business relationship, must be strengthened.

¹ Mentioned in Article L. 543-1 of the Monetary and Financial Code, which is to say asset management companies (“AMC”), legal entities that manage the AIF mentioned in Article L. 214-24 III 3°, managers of EUVECA and EUSEF funds..

² Mentioned in Article L. 214-1 I of the Monetary and Financial Code

1. DEFINITION OF A POLITICALLY EXPOSED PERSON

Article L. 561-10 1° of the Monetary and Financial Code, which transposes Article 3(9) of Directive (EU) 2015/849, defines a PEP as: *“an individual exposed to particular risks on account of the political, jurisdictional or administrative functions he/she performs or has performed or of those that immediate family members or individuals known to be closely associated with him/her or who become closely associated during the business relationship perform or have performed”*.

Accordingly, for a French obliged entity, a PEP is an individual of French or foreign nationality who:

- performs or has performed political, jurisdictional or administrative functions (Article R. 561-18 I); or
- has an immediate family member (Article R. 561-18 II) or close associate with no family connection (Article R. 561-18 III) who is him/herself a PEP on account of the functions he/she performs or has performed.

These *“political, jurisdictional or administrative functions”* are set out in full in Article R. 561-18 I of the Monetary and Financial Code:

- 1) Head of state, head of government, member of a national government or member of the European Commission;
- 2) Member of a national parliamentary assembly or of the European Parliament, member of the governing body of a political party or grouping subject to the provisions of Law No. 88-227 of 11 March 1988 or of a foreign political party or grouping;
- 3) Member of a supreme court, constitutional court or other high court whose decisions are not, except in exceptional circumstances, subject to review;
- 4) Member of a court of auditors;
- 5) Officer or member of the governing body of a central bank;
- 6) Ambassador or chargé d'affaires;
- 7) General officer or senior officer in command of an armed force;
- 8) Member of an administrative, management or supervisory body of a public company;
- 9) Director, deputy director or member of the board of an international organisation established by a treaty, or an individual holding an equivalent position within such an organisation.

An order issued by the Minister for the Economy sets out the list of functions corresponding on the national level to those listed above and drawn from the transposition of the 4th Directive.

An individual who performs any of these functions is a PEP and remains a PEP for one year following the cessation of those functions.

According to Article R. 561-18 II of the Monetary and Financial Code, the *“immediate family members”* of a PEP are his/her:

- spouse, de facto spouse, civil solidarity pact (PACS) partner or partner in a registered civil partnership under foreign law;
- children and each of their spouses, PACS partners or partners from registered civil partnerships under foreign law;
- parents.

According to Article R. 561-18 III of the Monetary and Financial code, the *“individuals known to be closely associated”* with a PEP are:

- a) Natural persons who, together with the PEP, are beneficial owners of a legal entity, a collective investment, a trust or a comparable legal structure under foreign law. This includes, for example, partners in a joint venture;
- b) Natural persons who are the sole beneficial owners of a legal entity, a collective investment, a trust or a comparable legal structure under foreign law known to have been established for the benefit of the PEP.

This includes “nominees” who appear to be acting or receiving benefits on their own behalf, whereas in practice they are acting on behalf of the PEP;

- c) Any natural person “known to have close business ties” with the PEP. This includes, therefore, the PEP’s business partners.

Position

In the situation referred to in c) above, three conditions are therefore required:

i. There must be a business relationship, whether commercial or civil in nature, which may relate to joint economic interests or, more generally, to interests likely to have an influence on the financial or economic situation of each of these individuals. As such, the pecuniary nature of the service provided or the functions performed by the natural person close to the PEP is an indication or presumption.

ii. The relationship must be close, having either a regular or significant impact on the PEP’s affairs. The relationship will be close if it has a significant financial impact on the PEP’s income. The closeness of the relationship may also be reflected in the significant number of activities carried out by that individual on behalf of the PEP, or in the significance of that activity for a single transaction;

iii. The relationship must be known to the obliged entity, because the information is public, well-known or obvious.

- Can the scope of additional due diligence measures specific to PEPs be extended to other individuals?

No. Classification as a PEP is subject to strict conditions, and obliged entities may not classify non-PEPs as PEPs or apply to them the additional due diligence measures provided for in Article R. 561-20-2.

However, obliged entities may classify individuals who do not meet the definition of PEP as high risk, either because they perform a political, jurisdictional or administrative function not covered here, or because they have a family relationship not referred to in Article R. 561-18 II but are exposed to a risk considered comparable to that of a PEP. In these cases where the risk is deemed higher by the obliged entity, the obliged entity may be required, in accordance with Article L. 561-10-1, to strengthen the due diligence measures with regard to these individuals.

- Can the scope of additional due diligence measures specific to PEPs be extended to clients who are no longer PEPs?

No. No. If the individual ceases to be a PEP, then the obliged entity can no longer apply to them the additional due diligence measures specified in Article R. 561-20-2.

If the obliged entity considers that the client ceasing to be a PEP does nevertheless pose a high risk according to its own risk classification, then it should continue to apply enhanced measures appropriate to the risk, in accordance with Article L. 561-10-1 of the Monetary and Financial Code.

2. HOW TO DETERMINE WHETHER THE CLIENT OR, WHERE APPLICABLE, THE BENEFICIAL OWNER IS A PEP

In accordance with Article R. 561-20-2 of the Monetary and Financial Code, obliged entities must implement procedures, appropriate to the money laundering and terrorist financing risks to which they are exposed, to determine whether their client, or his/her beneficial owner, is a PEP or becomes one during the course of the business relationship.

If the client does not voluntarily declare him/herself or his/her beneficial owner as a PEP, the identification and know-your-client due diligence must allow the obliged entity, following a risk-based approach, to determine whether a client or beneficial owner is a PEP.

To this end, the obliged entity is required to carry out the due diligence measures provided for in respect of any client before entering into a business relationship, namely:

- a) identify the client and, where applicable, the beneficial owner, and verify the identity details on presentation of any written document that provides proof of identity, in accordance with the provisions of Articles L. 561-5, R. 561-5, R. 561-5-1 and R. 561-7 of the Monetary and Financial Code;
- b) obtain information relating to the purpose and nature of this relationship and any other relevant information, in accordance with the provisions of Article L. 561-5-1 of the Monetary and Financial Code and of Article R. 561-12 of the same code further clarified in an order, including information relating to the professional activities carried out, which can be used to determine which clients/beneficial owners should be classified as PEPs.

Where the client is a legal entity, it should be determined whether the beneficial owner(s) are PEPs.

Obliged entities may find it useful to refer to the AMF guidelines on due diligence obligations with respect to clients and their beneficial owners (Position - Recommendation DOC-2019-16).

In accordance with the terms of Article R. 561202 of the Monetary and Financial Code, the obliged entity must always have up-to-date knowledge of its client's situation to enable it to:

- detect any client who may become a PEP during the business relationship;
- monitor the connections between the individuals performing one of the aforementioned functions and their family members and those individuals with whom they may have a close relationship.

To this end, **the obliged entity may use a rigorous identification questionnaire**, which contractually requires its clients to declare themselves, or their beneficial owner(s), if they meet or cease to meet the definition of a PEP. This written contractual commitment by clients to declare themselves, or their beneficial owner, as a PEP may assist in the process of identifying and knowing clients by providing information to obliged entities. **Nevertheless, insofar as it is based on the good faith of those clients, such a commitment is not sufficient to discharge obliged entities of their obligation of ongoing due diligence, the proper implementation of which is their sole responsibility.**

The obliged entity also considers publicly available information (e.g. notices of appointment orders on the Légifrance website, the website of the High Authority for Transparency in Public Life) or available through other reliable and independent sources or through the main national or international media. **In France, there is no register of PEPs.**

The regulations do not require obliged entities to have an automated PEP detection tool. Each obliged entity must tailor its system to its own business activity, structure, organisation or size in order to detect PEPs effectively.

3. ADDITIONAL DUE DILIGENCE MEASURES FOR PEPs

Pursuant to Article L. 561-10 1°, where the client or beneficial owner of the client is a PEP, the obliged entity is required to implement additional due diligence measures in respect of the client and/or beneficial owner, in addition to those due diligence measures required for any client.

The implementation of the additional due diligence measures specific to PEPs has no bearing on the implementation of the other due diligence measures specified in the Monetary and Financial Code for use in special circumstances. These include in particular:

- transactions posing a high risk in terms of AML-CFT (Article L. 561-10-1 II);

- carrying out transactions that meet one of the criteria for the enhanced review process (Article L. 561-10-2).
- transactions carried out by persons domiciled, registered or based in high-risk third countries (Art. L. 561-10 3°).

3.1. Additional measure 1: The obligation to entrust a member of the executive body, or any individual authorised by the executive body for this purpose, with the decision to enter into or maintain a business relationship with a PEP client or a client whose beneficial owner is a PEP

Involving an individual at a higher level can be justified by (i) the need for particularly rigorous identification and identity verification procedures, (ii) the nature of the risks arising from having such a client throughout the relationship, (iii) the ability of the obliged entity to measure and control these risks (cost of the IT tools to be implemented in the event of taking on such a client), and (iv) the sensitivity of information relating to this type of client, particularly with regard to circulating such information within a group for AML-CFT purposes.

In these circumstances, the process of agreeing to take on a PEP or agreeing to maintain a relationship with a client who becomes a PEP must be formalised by the obliged entity in a procedure, which must specify that the decision of a member of the executive body (or any individual authorised by it) is mandatory.

Position

For portfolio asset management companies, this procedure must also ensure that the compliance function is properly informed so that it can carry out its duties in an appropriate manner.

This procedure may in particular require the opinion of the compliance function before the executive body makes its decision.

Position

The individuals authorised to make decisions to enter into or maintain a business relationship, including where these decisions are delegated, must have a sufficiently high level of seniority in relation to the risks associated with the business relationship. These decisions may be delegated to a specific individual or to a function. Where the decision to enter into or maintain a business relationship with PEPs is entrusted to a business line manager or to a manager who performs an operational or commercial function, the obliged entity must ensure that:

- **This individual has sufficient knowledge of the risks to which the obliged entity is exposed;**
- **For portfolio asset management companies, the compliance function is involved in the process of agreeing to enter into or maintain a business relationship with a PEP;**
- **For portfolio asset management companies, an escalation process is put in place that refers the final decision to a member of the executive body in the event of disagreement between the compliance function and the business line or operational or commercial functions.**

In any event, the delegated authority must be formalised, and the executive body must be kept regularly informed of business relationships entered into or maintained with PEPs.

3.2. Additional measure 2: The obligation to determine the source of wealth and funds involved in the business relationship or transaction with a PEP client or a client whose beneficial owner is a PEP

The legislator justifies the requirement to determine the source of wealth and funds based on the need for the obliged entity to assess the money laundering and terrorist financing risks arising from having a PEP client or a client whose beneficial owner is a PEP. Determining the source of wealth and funds for each relationship or transaction is of particular importance in the case of business relationships entered into with PEP clients, or clients whose beneficial owner is a PEP, who perform important functions in a country where corruption is widespread.

Position

The obliged entity must obtain information on the PEP's source of income and an estimate of his/her wealth. The type of information and/or documents to be obtained on the source of wealth and funds must be appropriate to the characteristics of the business relationship and the risk posed by the transaction.

To determine the source of funds and the economic justification for a PEP's transactions, the obliged entity must rely on the declarations and evidence provided to it or on public information (press, etc.). The obliged entity must be particularly rigorous regarding this information, especially with regard to justifying transactions favouring anonymity, and must thoroughly check these documents with the entities that provided them (financial institutions in particular) and by consulting public information databases.

In all cases, the obliged entity must keep a record of the steps taken so that it can justify them to the AMF. Where no documentary evidence can be found to remove any suspicion of AML-CFT, the obliged entity must file a suspicious transaction report with TRACFIN (see AMF guidelines on the obligation to report to TRACFIN - Position DOC-2019-18).

3.3. Additional measure 3: Enhanced monitoring of the business relationship

In accordance with Article R. 561-20-2 3°, the obliged entity must strengthen, with regard to its PEP clients, the due diligence measures required for its non-PEP clients and, in this respect, must, during the course of the business relationship with the PEP:

- update the information held on the purpose and nature of the business relationship more frequently;
- monitor the transactions carried out more closely.

The obliged entity must ensure that transactions carried out are consistent with the up-to-date knowledge of these business relationships. In the case of obliged entities that have an automated system for monitoring and analysing business relationships, they must ensure that the system is configured in such a way that it is effective in detecting unusual transactions in the relationships in question. They must carry out an in-depth analysis of any unusual transaction.