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Joint 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

The Risk-Based Supervision Guidelines

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1. Executive Summary

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 aims, inter alia, to bring European legislation in line with the Financial Action Task Force's International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. It puts the risk-based approach at the centre of Europe's anti-money laundering and countering the financing of terrorism (AML/CFT) regime and recognises that the risk of money laundering (ML) and terrorist financing (TF) can vary. It requires Member States, competent authorities and obliged entities to take steps to identify and assess that risk with a view to deciding how best to manage it.

Article 48(10) of Directive (EU) 2015/849 requires the ESAs to issue guidelines to competent authorities on the characteristics of a risk-based approach to AML/CTF supervision (RBS) and the steps supervisors should take when conducting AML/CFT supervision on a risk-sensitive basis. The aim is to create both a common understanding of the RBS and to establish consistent and effective supervisory practices across the EU. The ESAs are required to take specific account of the nature and size of a business and lay down specific measures where this is appropriate and proportionate.

In these guidelines, the RBS is characterised as an ongoing and cyclical process that includes four steps:

- The identification of ML/TF risk factors, whereby competent authorities obtain information on both domestic and foreign ML/TF threats affecting the relevant markets;
- The risk assessment, whereby competent authorities use this information to obtain a holistic view of the ML/TF risk associated with each credit or financial institution ('firm'), or group of firms, including the inherent risk to which the firm or group of firms is exposed and the risk mitigants a firm or group of firm has in place;
- The allocation of AML/CFT supervisory resource based on this risk assessment, which includes decisions about the focus, depth, duration and frequency of on-site and off-site activities, and supervisory staffing needs, including technical expertise; and
- Monitoring and review to ensure the risk assessment and associated allocation of supervisory resource remains up to date and relevant.

These guidelines make recommendations for each of these four steps.



These guidelines aim to provide a common European basis for the application of the risk-based approach to AML/CFT supervision set out in both the Directive (EU) 2015/849 and the FATF's recommendations. They build on the ESAs' 'Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision', which was published in October 2013¹ and complement other ESA Guidelines and Technical Standards on the supervision of credit and financial institutions, including the Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP).

The ESAs publicly consulted on a version of these guidelines between 22 October 2015 and 22 January 2016. Respondents welcomed the draft guidelines and considered that they would support the development of an effective risk-based approach to AML/CFT across the EU. Some respondents raised concerns about the ability of national competent authorities to apply these guidelines in a consistent manner, stressed the need for the guidelines to be consistent with international AML/CFT standards and urged the ESAs to do more to encourage competent authorities to share relevant information with firms. These concerns have been addressed in these guidelines as appropriate.

These guidelines will apply by [one year after these guidelines have been issued]

¹ Joint Committee of the European Supervisory Authorities: "Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision", JC-2013-72, October 2013
<http://www.eba.europa.eu/documents/10180/16145/JC-2013-72+%28Report+on+Risk+Based+Supervision%29.pdf>
<https://eiopa.europa.eu/joint-committee/index.html>
<http://www.esma.europa.eu/content/Preliminary-report-anti-money-laundering-and-counter-financing-terrorism-Risk-Based-Supervis>

2. Background and rationale

On 26 June 2015, 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 entered into force. This Directive aims, inter alia, to bring European legislation into line with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation that the Financial Action Task Force (FATF), an international anti-money laundering standard setter, adopted in 2012.

In line with the FATF's standards, the Directive puts the risk-based approach at the centre of Europe's anti-money laundering and countering the financing of terrorism (AML/CFT) regime. It recognises that the risk of money laundering (ML) and terrorist financing (TF) can vary and that Member States, competent authorities and obliged entities have to take steps to identify and assess that risk with a view to deciding how best to manage it. Consequently, under a risk-based approach, competent authorities will allocate more AML/CFT supervisory resources to areas of higher ML/TF risk and exercise their responsibilities more effectively.

Article 48(10) of Directive (EU) 2015/849 requires the ESAs to issue guidelines to competent authorities on the characteristics of a risk-based approach to AML/CTF supervision and the steps supervisors should take when conducting AML/CTF supervision on a risk-sensitive basis. The aim is to create a common understanding of the risk-based approach to AML/CTF supervision and also to establish consistent and effective supervisory practices across the EU, which are consistent with international standards, including FATF Recommendation 26 and its interpretative note. The ESAs are held to take specific account of the nature and size of a business and lay down specific measures where appropriate and proportionate.

In these guidelines, the risk-based approach to AML/CFT supervision is described as a cyclical process.

- Step 1 is the identification of ML/TF risk factors, whereby competent authorities obtain information on both domestic and foreign ML/TF risks affecting the relevant markets;
- Step 2 is the risk assessment, whereby competent authorities obtain a holistic view of the ML/TF risk to which each subject of assessment is exposed;
- Step 3 is the allocation of AML/CFT supervisory resource in a way that is commensurate with the ML/TF risk identified. This includes decisions about the focus, depth, duration and frequency of on-site and off-site supervision, and supervisory staffing needs, including technical expertise; and
- Step 4 is monitoring and review to ensure the risk assessment and associated allocation of supervisory resource remains up to date and relevant. This means that Step 4 can initiate again the identification of relevant information (Step 1), which may inform a new or

updated risk assessment (Step 2), which in turn triggers new supervisory actions to mitigate those risks (Step 3).



This description builds on the ESAs' 'Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision', which was published in October 2013². It does not include guidance on market entry controls, which is provided in other ESA guidelines.

Competent authorities should apply these guidelines when carrying out risk-based AML/CFT supervision.

² Joint Committee of the European Supervisory Authorities: "Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision", JC-2013-72, October 2013, <http://www.eba.europa.eu/documents/10180/16145/JC-2013-72+%28Report+on+Risk+Based+Supervision%29.pdf> https://eiopa.europa.eu/Publications/Reports/JC-2013-72_Report_on_Risk_Based_Supervision_.pdf http://www.esma.europa.eu/system/files_force/library/2015/11/jc-2013-72_report_on_risk_based_supervision_0.pdf?download=1

3. Joint 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

The Risk-Based Supervision Guidelines

Status of these Guidelines

This document contains Joint Guidelines issued pursuant to Articles 16 and 56 subparagraph 1 of 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; Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); and Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) - ‘the ESAs’ Regulations’. In accordance with Article 16(3) of the ESAs’ Regulations, competent authorities and financial institutions must make every effort to comply with the Guidelines.

Joint Guidelines set out the ESAs’ view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom Joint Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where the Joint Guidelines are directed primarily at institutions.

Reporting Requirements

In accordance with Article 16(3) of the ESAs’ Regulations, competent authorities must notify the respective ESA whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by dd.mm.yyyy [two months after issuance]. In the absence of any notification by this deadline, competent authorities will be considered by the respective ESA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to [compliance@eba.europa.eu, compliance@eiopa.europa.eu and compliance@esma.europa.eu] / [compliance@jointcommittee.europa.eu] with the reference ‘JC/GL/201x/xx’. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.



Notifications will be published on the ESAs' websites, in line with Article 16(3).

Title I - Subject matter, scope and definitions

Subject matter

1. These guidelines set out the characteristics of a risk-based approach to anti-money laundering and countering the financing of terrorism (AML/CFT) supervision and the steps competent authorities should take when conducting supervision on a risk-sensitive basis as required by Article 48(10) of Directive (EU) 2015/849³.

Scope

2. These guidelines are addressed to competent authorities as defined in Articles 4(2)(ii) of Regulation (EU) No 1093/2010, 4(2)(ii) of Regulation (EU) No 1094/2010 and 4(3)(ii) of Regulation 1095/2010.
3. Competent authorities should apply these guidelines when designing, implementing, revising and enhancing their own AML/CFT RBS model.

Definitions

4. For the purpose of these Guidelines, the following definitions shall apply:
 - **Cluster** Means a group of subjects of assessment having similar characteristics.
 - **Competent authorities** Means the authorities competent for ensuring firms' compliance with the requirements of Directive (EU) 2015/849 as transposed by national legislation.⁴
 - **Firm** Means a credit institution or a financial institution as defined in Article 3(1) and (2) of Directive (EU) 2015/849.
 - **Inherent money laundering/terrorist financing ('ML/TF') risk** Means the level of money laundering and terrorist financing risk before mitigation.
 - **Risk-based approach (RBA)** Means an approach whereby competent authorities and obliged entities identify, assess and understand the ML/TF risks to which subjects of assessment are exposed and take AML/CFT measures that are proportionate to those risks

³ 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 (OJ L 141, 5.6.2015, p.73).

⁴ See Articles 4(2)(ii) of REGULATION (EU) No 1093/2010, 4(2)(ii) of Regulation (EU) No 1094/2010 and 4(3)(ii) of Regulation 1095/2010

- Risk-based AML/CFT Supervision (RBS) Means the risk based approach to AML/CFT supervision referred to in Article 48(6) of Directive (EU) 2015/849, where the intensity and frequency of the AML/CFT supervision of firms are determined on the basis of the assessment of the ML/TF risks affecting these firms.
- RBS Model Refers to the whole set of procedures, processes, mechanisms and practicalities allowing competent authorities to exercise their AML/CFT supervisory powers in a way that is commensurate with the identified ML/TF risks.
- ML/TF Risk Means the likelihood and impact of ML/TF taking place. Risk refers to inherent risk.
- ML/TF risk factors Means variables that, either on their own or in combination, may increase or decrease ML/TF risk.
- Risk profile Means the overall characteristics (including type and level) of risk that remains after mitigation.
- Subject of assessment Means any sectors or sub-sector of the financial system, a firm, group or cluster, categorised according to criteria laid down by the competent authorities.
- Threat Means the potential harm caused by a person or group of people, object or activity. In the ML/TF context, this includes the potential harm caused by criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities.

Title II - Requirements regarding AML/CFT risk-based supervision

Implementing the RBS model

General considerations

5. Competent authorities should apply the following four steps as part of an effective AML/CFT RBS model:
 - i. Step 1 – Identification of ML/TF risk factors;
 - ii. Step 2 – Risk assessment;
 - iii. Step 3 – Supervision; and
 - iv. Step 4 – Monitoring, review and follow-up.
6. Competent authorities should note that the RBS is not a one-off exercise, but an ongoing and cyclical process.
7. Competent authorities may group firms that do not belong to the same financial group but share similar characteristics into 'clusters' and consider them as a single 'subject of assessment'. Examples of characteristics firms within one cluster might share include their size, the nature of their business, the type of customers serviced, their geographic areas or activity and their delivery channels. In that case, some elements of the RBS process may be carried out at the collective level of the cluster itself, rather than at the level of each individual firm within that cluster.
8. Competent authorities who cluster firms should ensure that the conditions and practicalities of the clustering are appropriate to the ML/TF risks associated with firms in that cluster. Competent authorities should not normally cluster groups, but instead treat firms that form part of the same financial group as one 'subject of assessment'.
9. Should a competent authority know, or have reasonable grounds to suspect, that the risk associated with an individual firm in a cluster varies significantly from that associated with other firms in the cluster, for example because the firm is beneficially owned by individuals whose integrity is in doubt, or because the firm's internal control framework is deficient, the competent authority should remove that firm from the cluster and assess it either individually, or as part of a cluster of firms with a similar risk level.

Proportionality

10. Competent authorities should be proportionate in their supervision of subjects of assessment for AML/CFT purposes. The extent of information sought, and the frequency and intensity of supervisory engagement and dialogue with a firm should take into account the nature and size of the firm and be commensurate with the ML/TF risk identified.
11. Competent authorities should recognise that the size or systemic importance of a firm may not, by itself, be indicative of the extent to which it is exposed to ML/TF risk; small firms that are not systemically important can nevertheless pose a high ML/TF risk.



Cooperation with other competent authorities

12. Within the remit of their national legislation, competent authorities should cooperate and exchange all relevant information without delay to ensure the effective AML/CFT supervision of subjects of assessment. Where subjects of assessment operate on a cross-border basis, such cooperation should extend to competent authorities of other Member States and where relevant, competent authorities of third countries.
13. Competent authorities should apply all cooperation and coordination measures and tools at their disposal, including those implemented by their Member States pursuant to Article 48 (4), Article 48(5) and Article 49 of Directive (EU) 2015/849.

Step 1: Identification of ML/TF risk factors

General considerations

14. When applying a RBS model, competent authorities should firstly identify the risk factors that will affect the ML/TF risks to which the subject of assessment is exposed.
15. The extent and type of information sought should be proportionate to the nature and size of the subject of assessment's business. It should also take into account its risk profile as determined on the basis of previous risk assessments, if any, and the context in which the subject of assessment operates, such as the nature of the sector to which the subject of assessment belongs. Competent authorities should consider setting out what information they will always require, require similar information for comparable subjects of assessment and consider what type of information will trigger a more extensive and in-depth information request.
16. When identifying ML/TF risk factors, competent authorities should draw on the Joint Guidelines under Article 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transactions.

Sources of information

17. Where possible, competent authorities should identify risk factors based on information from a variety of sources. Competent authorities should determine the type and number of these sources on a risk-sensitive basis. Competent authorities should ensure that they have access to appropriate sources of information and take steps, where necessary, to improve these.
18. Competent authorities should always consider:
 - The European Commission's supranational risk assessment;
 - The ESAs' Opinion on the ML/TF risk affecting the financial market;
 - Information from the national government and foreign governments where relevant, such as the national risk assessment (NRA);
 - Information from supervisors such as guidance, and relevant findings from supervisory action, such as notes for record, information gathered as part of the authorisation, licensing or passporting process, onsite visits, offsite controls and enforcement action.

Where relevant information is held by other competent authorities either at home or abroad, competent authorities should take steps to ensure that gateways make possible the exchange of that information, and that this information can be exchanged in a timely manner. This also applies to information held by the European Central Bank through the Single Supervisory Mechanism;

- Delegated Acts adopted by the European Commission pursuant to Article 9(2) of Directive (EU) 2015/849; and
 - Information from Financial Intelligence Units (FIUs) and law enforcement agencies, such as threat reports, alerts and typologies.
19. Other sources of information competent authorities may consider include
- Information from industry bodies, such as typologies and information on emerging risks;
 - Information from civil society, such as corruption perception indices;
 - Information from international standard-setting bodies such as mutual evaluations of countries' AML/CFT, anti-corruption and tax regimes;
 - Public information sources, such as newspaper reports;
 - Information from commercial organisations, such as risk and intelligence reports; and
 - Information from academic institutions.

Domestic risk factors

20. Competent authorities should have adequate knowledge, awareness and understanding of the ML/TF risks identified at the national level in order to identify the ML/TF risk factors associated with the domestic financial activities of subjects of assessment.
21. As part of this, and based on the sources described in paragraphs 17-19, competent authorities should understand, among other things:
- The type and scale of money laundering linked to predicate offences committed domestically;
 - The scale of laundering of proceeds from predicate offences committed abroad;
 - The scale of, and the level of support for, terrorist activities and groups in the country;
 - Relevant ML/TF typologies identified by the FIU and other public authorities or private entities.

Foreign risk factors

22. Where a subject of assessment maintains significant links with other Member States or third countries so that subjects of assessment are exposed to ML/TF risks associated with these other countries, competent authorities should identify these risks. Significant links include those where:
- A firm maintains significant business relationships with counterparties established in other Member States or third countries;
 - A firm forms part of a financial group established in another Member State or third country;

- A firm's beneficial owners are based in another Member State or third country; and
 - Any other relevant links to another Member State or third country exist, which means that the firm is exposed to the ML/TF risk associated with that country.
23. Competent authorities should take reasonable steps to acquire adequate knowledge, awareness and understanding of the ML/TF risks associated with these Member States or third countries that may affect the activities carried out by the subjects of assessment. To this end, competent authorities should identify risk factors in line with those described in paragraphs 20 to 21 for each of these Member States or third countries.
24. When identifying third countries which have strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the European Union, competent authorities should have regard to the delegated acts adopted by the European Commission in accordance with Article 9(2) of Directive (EU) 2015/849 as well as public statements issued by relevant international standard-setters, including the Financial Action Task Force (FATF), MoneyVal or other FATF-Style Regional Bodies.

Sector-wide ML/TF risk factors

25. Competent authorities should have a good understanding of the risk factors that are relevant for each financial sector and sub-sector, such as credit institutions, brokerage firms, investment firms, payment institutions, electronic money institutions, bureaux de change or life insurance companies. As part of this, competent authorities should understand how each sub-sector is organised, and the risks associated with shared features such as the type of products and services offered, the delivery channels used and the type of customers they service.
26. Competent authorities should base their understanding of the sectoral and sub-sectoral risk factors on a high-level view of all the information obtained from firms in a particular financial sector or sub-sector about the ML/TF risks they face. Competent authorities can then identify commonalities within each financial sub-sector and the financial sector as a whole.

Information on ML/TF risk factors at the level of the subject of assessment

27. Competent authorities should gather sufficient, relevant and reliable information to develop an overall understanding of the subject of assessment's:
- Inherent ML/TF risk factors, and
 - Factors that mitigate inherent ML/TF risk.
28. Where the subject of assessment is a firm, competent authorities should for this purpose obtain information which should include, but will not be restricted to:
- The ownership and corporate structure, taking into account whether the subject of assessment is an international, foreign or domestic institution, parent company, subsidiary, branch or other kind of establishment, and the level of complexity and transparency of its organisation and structure.
 - The reputation and integrity of senior managers, members of the management body

and significant shareholders;

- The nature and complexity of the products and services provided and the activities and transactions carried out;
 - The delivery channels used, including the free provisions of services and the use of agents or intermediaries;
 - The types of customers serviced;
 - The geographical area of the business activities, in particular where they are carried out in high-risk third countries⁵, as well as, if applicable, the countries of origin or establishment of a significant part of the subject of assessment's customers.
 - The quality of internal governance arrangements and structures, including the adequacy and effectiveness of internal audit and compliance functions, the level of compliance with AML/CFT legal and regulatory requirements and the effectiveness of the AML/CFT policies and procedures to the extent that these are already known.
 - The prevailing 'corporate culture', particularly the 'compliance culture' and the culture of transparency and trust in relations with the competent authorities.
 - Other prudential and general aspects, such as years in operation, liquidity or capital adequacy.
29. This information may originate from the overall prudential and/or conduct supervision and take into account, where relevant, prudential information obtained in the context of the Single Supervisory Mechanism⁶. However, it may be appropriate to collect such information specifically if it is not already held on the competent authorities' records.
30. Where subjects of assessment are clusters of individual firms, competent authorities should identify relevant factors based on those listed in paragraph 27 to characterise the cluster as a whole. This should enable competent authorities to justify their decisions on the risk profile they assign to the cluster. Competent authorities should also consider the results of previous supervisory actions in respect of firms included within that cluster.

⁵ For information on factors to consider when assessing the ML/TF risk associated with jurisdictions, please refer to the Joint Guidelines under Article 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced 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.

⁶ See Article 6 of the Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p.63).

Step 2: Risk assessment

31. Competent authorities should take a holistic view of the ML/TF risk factors they have identified under Step 1 that, together, will form the basis for the subject of assessment's risk assessment.
32. As part of this, competent authorities should assess the extent to which the inherent risk factors identified under Step 1 affect the subject of assessment, and the extent to which the AML/CFT systems and controls which the subject of assessment has in place are adequate to effectively mitigate the inherent ML/TF risks it is exposed to. AML/CTF systems and controls include at least those listed in Article 8(4) of Directive (EU) 2015/849, certain product design features limiting ML/TF exposure, as well as wider governance arrangements and risk management processes, including overall risk culture.

Weighting inherent risk factors and mitigating factors

33. Competent authorities may decide to weight risk factors and mitigating factors differently, depending on their relative importance.
34. When weighting inherent risk factors and mitigating factors, competent authorities should make an informed judgement about the relevance of different factors in relation to a specific subject of assessment. The weight given to individual factors can vary from one subject of assessment to another, but competent authorities should use similar factors for similar subjects of assessment.
35. Competent authorities should ensure that weighting is not unduly influenced by just one factor and that due consideration is given to factors that are identified by Directive (EU) 2015/849 or national legislation as always presenting a high money laundering or terrorist financing risk.
36. Substantial deficiencies with the potential severely to affect the effectiveness of AML/CFT preventive measures should be given greater weight in the assessment than average or minor deficiencies.

Risk profiles and categorising subjects of assessment

37. The combination of the assessment of the inherent risk level and the effect of risk mitigants on the inherent risk level should result in the assignment of an overall risk profile to the subject of assessment to facilitate comparison between subjects of assessment and to inform the action they take in Step 3. Competent authorities should use their professional judgement to validate the results of the overall risk assessment and correct it if necessary.
38. Competent authorities should decide on the most appropriate way to categorise the risk profiles of subjects of assessment; although many competent authorities classify subjects of assessment as high, medium or low risk, other categorisations, for example high, medium high, medium low, low, are also possible.



39. Competent authorities should consider sharing their categorisation, and the reasons for this categorisation, with their subjects of assessment.
40. Competent authorities should note that the categorisation of subjects of assessment for ML/TF risk purposes may be different from categories applied to the same subjects of assessment for wider conduct risk or prudential risk purposes.

Step 3: Supervision

41. The risk assessment should form the basis for the development of a supervisory strategy for each subject of assessment and for the supervised sector as a whole.

Individual AML/CFT supervisory plans

42. Competent authorities should allocate supervisory resources to each subject of assessment in a way that is commensurate with the subject of assessment's risk profile
43. Examples of ways in which competent authorities can adjust their approach include:
 - Adjusting the nature of supervision, for example, by adjusting the ratio between off-site and on-site supervision. Competent authorities should note that off-site supervision alone is unlikely to be sufficient in higher risk situations;
 - Adjusting the focus of supervision, for example by focusing on the management of risks associated with particular products or services, or on specific aspects of the AML/CFT processes such as customer identification, risk assessment, ongoing monitoring and reporting activities;
 - Adjusting the frequency of supervision, for example by monitoring key indicators less often where the risks are reduced; and
 - Adjusting the intensity and intrusiveness of supervision, for example by determining, according to risk, the extent of customer file reviews, sample testing of transactions and suspicious transactions reports conducted on-site. Competent authorities should note that a review based only on an assessment of policies and procedures, rather than on their implementation, is unlikely to be sufficient in higher risk situations.
44. Competent authorities should ensure that subjects of assessment associated with higher ML/TF risks are subject to more frequent and intrusive supervision. This also applies where firms have been included within a cluster for risk assessment purposes.
45. Competent authorities should recognise that firms exposed to high levels of ML/TF risk may not be systemically important. Therefore, when deciding on the most appropriate AML/CFT supervisory action, competent authorities should not rely solely on their prudential or conduct risk assessments, nor should they consider only systemically important firms. Competent authorities should note that it may not be appropriate to draw conclusions, for AML/CFT supervisory purposes, from the level of prudential or conduct risk, be it high or low.
46. If a new risk is identified in the course of on-site or off-site supervision, competent authorities should respond in an appropriate and timely fashion. This may include amending the initial AML/CFT supervisory plan to better reflect the ML/TF risks to which the subjects of assessment are exposed. Competent authorities should adequately document any changes to the AML/CFT supervisory plan.

Overall AML/CFT supervisory plan

47. Competent authorities should use their risk assessments of subjects of assessment as well as their wider understanding of the ML/TF risk to which their sector is exposed to assess the extent to which this poses a risk to their objectives, and allocate supervisory resources to AML/CFT supervision accordingly. Competent authorities should then decide on an overall supervisory strategy.
48. Competent authorities should ensure that sufficient resources are available to implement the supervisory strategy for all obliged entities.
49. In order to ensure the balance between all individual AML/CFT supervisory plans established in accordance with the previous paragraphs, competent authorities should coordinate them within the overall AML/CFT supervisory plan that should be consistent with the overall identified ML/TF risks.

Training

50. Competent authorities should ensure that staff with direct or indirect AML/CFT responsibilities have appropriate knowledge and understanding of the applicable legal and regulatory AML/CFT framework and are suitably qualified and trained to exercise sound judgement.
51. As part of this, competent authorities should train their supervisors in the practical application of their AML/CFT RBS model so that supervisors are able to carry out risk-based AML/CFT supervision in an effective and consistent manner. Among other things, competent authorities should ensure that supervisors are able to:
 - Understand a subject of assessment's degree of discretion in assessing and mitigating ML/TF risks;
 - Assess the quality of a subject of assessment's risk assessment; and
 - Assess the adequacy, proportionality and effectiveness of the subject of assessment's AML/CFT policies and procedures and wider governance arrangements and internal controls in light of the subject of assessment's own risk assessment.
52. Training should be tailored to the AML/CFT responsibilities of relevant staff and may include training courses, recruitment and 'learning by doing'. Competent authorities may also benefit from knowledge sharing among competent authorities and other relevant AML/CFT authorities.
53. Competent authorities should ensure staff's AML/CFT expertise remains up to date and relevant, and includes awareness of emerging risks as appropriate.

Step 4: Monitoring and follow-up actions

Updating the risk assessment and supervisory action plan (Steps 1, 2 and 3)

54. Since the RBS is not a one-off exercise, but an ongoing and cyclical process, the information on which the risk assessment is based should be reviewed periodically and on an ad hoc basis, and updated as necessary.

Periodic reviews

55. Competent authorities should carry out periodic reviews of their risk assessments to ensure that they remain up to date and relevant.
56. The schedule of each review should be commensurate with the ML/TF risk associated with the subject of assessment. For high-risk subjects of assessment or those facing frequent changes in their activities and operating in a fast changing environment, reviews should take place more frequently.

Ad hoc reviews

57. Ad hoc reviews of the risk factors, the risk assessment and, where necessary, the supervisory plans should take place following significant changes affecting the subject of assessment's risk profile. Examples of significant changes include:
- Major external events that change the nature of risks;
 - Emerging ML/TF risks;
 - Findings from off-site and on-site supervision and any follow-up of corrective or remedial actions taken by the subject of assessment;
 - Changes to, or new information emerging in relation to, owners of qualifying holdings, members of the management board or key function holders operations or the organisation of the subject of assessment; and
 - Other situations where the competent authority has grounds to believe that information on which it had based its risk assessment is no longer relevant or has significant shortcomings
58. Competent authorities should also consider whether changes affecting one particular subject of assessment might affect other subjects of assessment, and they should also renew the risk assessment process of other significantly affected subjects of assessment.

Review of the AML/CFT RBS model

59. Competent authorities should seek to satisfy themselves that their internal procedures, including their ML/TF risk assessment methodology, are applied consistently and effectively.
60. Where a review identifies issues with the AMF/CFT RBS model, competent authorities should take steps to address these. Ideally, the model should not be changed repeatedly within

short time intervals, to facilitate comparisons over time. This notwithstanding, competent authorities should review the methodology immediately where necessary.

Periodic reviews

61. Competent authorities should periodically review whether their AML/CFT RBS model delivers the intended outcome and, in particular, whether the level of supervisory resources remains commensurate with the ML/TF risks identified.
62. When reviewing the adequacy and effectiveness of their AML/CFT RBS model, competent authorities may use a variety of tools, including professional expertise, self-assessment questionnaires, sample testing of supervisory actions, comparison with new information such as reports and feedback from other competent or relevant AML/CFT authorities, law enforcement and other national agencies, or documents from relevant European or international organisations. Competent authorities should also seek to familiarise themselves with international best practices and consider participating in relevant international and European forums.
63. Measuring the impact of AML/CFT supervision on the level of compliance and the effectiveness of subjects of assessments' AML/CFT controls may also help competent authorities assess the effectiveness of their AML/CFT RBS model.

Ad hoc reviews

64. In addition to a regular review at fixed intervals, competent authorities should review, update or amend their AML/CFT RBS model if its adequacy or effectiveness is called into question by events such as:
 - External evaluations of the model by, for example, the FATF or Moneyval or external audits;
 - Internal evaluations of the model, for example, gap analysis, internal audit reports, quality assurance testing and 'lessons learned' exercises;
 - Significant changes to the supervisory system such as the creation of a new division or large increases in staff, change of board members or the management, or significant changes in the financial sector;
 - Significant changes of the legislative or regulatory AML/CFT environment; and
 - Emergence or identification of new risk factors.

Organisational and procedural aspects of the review process

65. An objective review process should be based on clear and transparent internal procedures. Such procedures should not only set out when a revision is due, but also the content and the persons in charge of the revision process. As regards the latter, the review of the AML/CFT RBS model may be carried out within whichever of the competent authority's team had previously set up the model or by the competent authority's internal quality review, internal audit or risk management team.

66. In addition to the internal review process, competent authorities may consider tasking an external expert to obtain an objective evaluation of its model or to ensure harmonisation on a national level with the models used by other competent authorities.

Record keeping

67. Competent authorities should document the AML/CFT RBS model, its implementation and subsequent reviews appropriately for its institutional (supervisory) memory and also provide a record of outcomes and decisions and their underlying rationale to ensure that actions taken by the competent authorities with regard to the different subjects of assessment are coherent and consistent.

Feedback and follow-up actions

Accountability

68. Senior management of the competent authorities should have an adequate understanding of the ML/TF risks present in the supervised sector and sub-sectors and be regularly informed on AML/CFT supervisory actions and their outcome. This is so they can judge the overall effectiveness of the measures implemented by the subjects of assessment to reduce these risks as well as the need to review, where appropriate, the intensity and frequency of the supervision and the allocation of supervisory resources.

Form of feedback

69. The findings of the ML/TF risk assessment should be shared with the relevant AML/CFT staff within the competent authority.
70. They may also inform the process of prudential and conduct supervision, or be relevant for a sectoral or national risk assessment or policy changes, as well as the process of co-operation with other competent or relevant AML/CFT authorities.
71. Competent authorities should determine appropriate ways to provide feedback to stakeholders about the outcomes of the risk assessments and the supervisory actions, either directly to the subjects of assessment concerned, or to the wider regulated sector, including trade and professional associations. The level of detail of information to be shared, the timing and the way this feedback is communicated may vary and will take into account the interests of the competent authorities and the applicable confidentiality provisions.
72. Examples of different ways to provide feedback to subjects of assessment include:
- Supervisory guidance;
 - Letters to individual subjects of assessment or groups of subjects of assessment;
 - Bilateral or multilateral meetings;
 - Enforcement notices; and
 - Speeches.





Title III - Implementation

Implementation

73. Competent authorities should implement these guidelines by incorporating them into their supervisory processes and procedures by [one year after these guidelines have been issued].

4. Accompanying documents

4.1. Impact assessment

Introduction

1. Directive (EU) 2015/849 places the risk-based approach at the centre of the Union's anti-money laundering and counter terrorist financing (AML/CFT) regime. It makes clear that the risk of money laundering and terrorist financing (ML/TF) is not the same in every case and that a risk-based approach helps effectively to manage those risks. It sets out a number of requirements competent authorities have to meet when applying a risk-based approach to AML/CFT supervision (RBS), and requires the European Supervisory Authorities (ESAs) to issue guidelines on the characteristics of the RBS and what competent authorities should do when conducting AML/CFT supervision on a risk-sensitive basis.
2. In 2012/13, the ESAs carried out work to clarify the concept of the RBS and assess its implications for competent authorities. The ESAs published their findings in a 'Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision' ('preliminary report') in October 2013 ^[7].

Scope and objectives

3. This impact assessment sets out how different policy options the ESAs considered when drafting the guidelines under Article 48(10) of Directive (EU) 2015/849 might affect their stakeholders.
4. The ESAs considered the views of expert AML/CFT competent authorities and found that the implementation of an RBS would not have a material net impact on firms or competent authorities in the EU.
5. In light of this, the ESAs considered that it would not be proportionate to carry out a full, quantitative assessment of the costs and benefits arising from the implementation of the proposed guidelines by competent authorities. Instead, this impact assessment examines, in qualitative terms, the impact these guidelines would have if all the competent authorities that apply, or will apply, an RBS fully complied with them. This means that the estimated net impact of the preferred options should be interpreted as the maximum impact from the full

⁷ Joint Committee of the European Supervisory Authorities: "Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision", JC-2013-72, October 2013, <http://www.eba.europa.eu/documents/10180/16145/JC-2013-72+%28Report+on+Risk+Based+Supervision%29.pdf>
<https://eiopa.europa.eu/joint-committee/index.html>
<http://www.esma.europa.eu/content/Preliminary-report-anti-money-laundering-and-counter-financing-terrorism-Risk-Based-Supervis>

implementation of the proposed guidelines; the impact from the actual implementation of these guidelines could be less.

Baseline

6. Directive (EU) 2015/849 requires competent authorities to meet the requirements in Article 48(6) when applying the RBS. It also mandates the ESAs, in Article 48(10), to issue guidelines on not only the characteristics of the RBS, but also the steps supervisors should take when conducting supervision on a risk-sensitive basis.
7. Since the requirements in Article 48(6) are insufficient for satisfying the mandate in Article 48(10), not issuing guidelines, or limiting the guidelines to the requirements in Article 48(6), is not an option.

Considered options

Approach

8. The ESAs considered whether to base their guidelines on the approach set out in the ESAs' preliminary report.

Option 1: Adopt the same approach.

9. These guidelines could adopt the same approach as that set out in the preliminary report.
10. The approach set out in the preliminary report reflects a common understanding by all EU AML/CFT supervisors of what the RBS entails. It is in line with international standards and recommendations, and its validity has not been questioned by national competent authorities either while it was being drafted or since being published.

Option 2: Adopt a different approach.

11. These guidelines could adopt a different approach.
12. Adopting a different approach would mean re-assessing the meaning of the RBS in the context of Directive (EU) 2015/849 and international standards.
13. Not following the approach set out in the preliminary report would risk jeopardising common understanding. It would also risk leading to the adoption of an approach which is inconsistent with international standards, upon which the preliminary report is based.
14. Adopting a different approach would therefore risk exposing Member States and competent authorities to international censure.
15. Option 1 is the ESAs' preferred option.

Level of detail

16. The ESAs considered the level of detail that would be appropriate for achieving both supervisory convergence and a consistent approach to AML/CFT supervision, as well as sufficient flexibility so that national competent authorities could take account of the

specificities of their regime and financial markets, including scale, the number, size and nature of supervised entities, the ML/TF risks and the organisation of AML/CFT supervision. The ESAs were mindful that these indicators can vary significantly from one Member State to another.

Option 1: High-level principles

17. Competent authorities could decide themselves how to design and apply their RBS model within a high-level, outcome-focused framework set by the guidelines.
18. This approach would provide competent authorities with significant flexibility so they could tailor their approach to the specificities of their regime and financial markets; but this approach would not be conducive to the convergence of supervisory practices and risk creating regulatory arbitrage. It would also offer little assistance to competent authorities seeking to review, create or implement their RBS and might be unsuitable for competent authorities with limited prior exposure to the RBS.

Option 2: Detailed and prescriptive guidelines

19. The guidelines could provide competent authorities with a detailed, step-by-step guide to implementing an RBS.
20. This approach would be conducive to fostering convergence of supervisory practices, but it would leave very limited or no opportunities for competent authorities to adapt their RBS model to suit their particular circumstances.
21. As a result, this approach risks being disproportionate or ineffective in at least some cases. It could also be incompatible with the basic premise of the risk-based approach, which is to adjust the supervisory response to the level of risk relevant financial markets are exposed to.

Option 3: High-level principles with elements of specific guidance

22. The guidelines could set out high-level principles, which reflect common understanding of the RBS; these high-level principles would be complemented by sufficient detail to achieve supervisory convergence, while providing room for competent authorities to adjust their approach in line with their legal and regulatory environment and the realities of their financial sector.
23. Option 3 is the ESAs' preferred option.

Cost-benefit analysis

24. These Guidelines will affect how competent authorities approach risk-based AML/CFT supervision, which may in turn have cost implications for obliged entities. However, the impact of these guidelines will vary from one Member State to another due to the existing divergence of supervisory practices and the degree to which national competent authorities have already applied an RBS in line with that set out in Directive (EU) 2015/849.

Benefits

25. In line with Regulations (EU) 1093/2010, 1094/2010 and 1095/2010, these Guidelines are designed to foster consistent, efficient and effective supervisory practices within the EU and to ensure the common, uniform and consistent application of Union law. They will help competent authorities comply with their obligations under national legislation transposing Directive (EU) 2015/849 and exercise their functions in a way that is both effective and compatible with international AML/CFT standards.
26. Effective AML/CFT supervision is key to ensuring that firms have in place and maintain effective policies and procedures to prevent and detect money laundering and terrorist financing.

Costs

For competent authorities

27. Based on the considerations set out above, these guidelines may create incremental operational costs for those competent authorities that do not already apply an RBS and may create incremental opportunity costs for those who will wish to review their RBS to ensure it is in line with what these guidelines require. However, these are likely to be one-off costs; in the medium to long term, applying these guidelines should help competent authorities allocate existing supervisory resources more effectively, so the ongoing cost of applying these guidelines is likely to be fully absorbed.

For firms

28. Based on the considerations set out above, these guidelines may create one-off, incremental costs for firms in jurisdictions where competent authorities do not yet apply an RBS, or where competent authorities will amend their RBS to bring it in line with these guidelines, as some firms may have to provide additional information to their competent authorities. However, since competent authorities will be able to refer to information they already possess or would require for wider conduct of business and prudential supervision, these costs are unlikely to be significant.
29. These guidelines may also create ongoing incremental costs for firms that are being assessed as presenting a greater ML/TF risk as they may be subject to greater supervisory scrutiny.



This will particularly be the case for firms whose prudential risk profile is low but whose ML/TF risk profile is heightened. However, it is likely that a far greater number of firms will have low ML/TF risk profiles and be subject to less supervisory scrutiny than at present; this means that applying these guidelines will generate a net benefit for the financial services sector as a whole.

4.2. Overview of questions for consultation

30. These guidelines are addressed to competent authorities. Answers to the following questions would be particularly helpful:

- Do you agree with the way the risk-based approach to supervision is described in these guidelines?
- In particular, do you agree that the four steps in these guidelines reflect the essential components of a risk based approach to supervision?

If not, what else do you think supervisors should focus on? Please explain by providing details on the principles you believe form part of an alternative approach. Please also clarify how this alternative approach meets the requirements of Directive (EU) 2015/849 and the international standards (FATF Recommendations).

- Do you consider that the level of detail in the guidelines is appropriate?
If not, where do you think additional, or less, detail would be warranted?
- What do you think the impact of these guidelines will be on the financial services industry?

4.3. Views of the stakeholder groups

31. The EBA's Banking Stakeholder Group (BSG) responded to this consultation.
32. The BSG agreed with the way the risk-based approach to supervision was described in the guidelines. It stressed that applying focus to higher risk firms was part of effective and sufficient AML/CFT supervision and supported the ESAs' assessment that greater detail could stand in the way of competent authorities applying the guidelines to different sectors in a proportionate and risk-sensitive way.
33. The BSG considered that the guidelines should
 - Set out more clearly whether and in what way regulatory and supervisory information should be shared with firms. This would help firms understand how supervisors assessed risk;
 - Take further steps to address the risk of competent authorities assessing country risk differently. Situations where the same country was rated differently by different competent authorities were unsustainable and not only created problems for firms operating on a cross-border basis, but also presented a risk of regulatory arbitrage. The BSG called on the ESAs to keep this aspect of the guidelines under regular review and update them as necessary; and
 - Acknowledge that the cost of compliance with these guidelines may not be insignificant.

4.4. Feedback on the public consultation

34. The ESAs publicly consulted on the draft proposal.
35. The consultation period lasted for three months and ended on 22 January 2016. Four responses were received from representatives or associations of the private sector, of which three were published on the ESAs' websites. The EBA's Banking Stakeholder Group also expressed a view.
36. This paper summarises the key points and other comments received during the public consultation, the ESAs' response and the action taken to address these comments.
37. Where several respondents made similar comments or the same respondent repeated their comments in response to different questions, these comments, and the ESAs' analysis, are included in the section of this paper where the ESAs considered them most appropriate.
38. Changes to the draft Joint Guidelines have been made as a result of the responses received during the public consultation.

Summary of key issues and the ESAs' response

39. All respondents welcomed the draft guidelines. They considered that the draft guidelines would foster a common understanding of the risk-based approach to AML/CFT supervision and support the implementation, by firms, of an effective risk-based approach to AML/CFT at the national level. Respondents supported the way the risk-based approach to supervision was described in the draft guidelines and generally found the level of detail proposed to be adequate.
40. Where respondents raised concerns, these broadly fell into three categories:
 - Concern about the ability or preparedness of national competent authorities to apply these guidelines in a consistent manner;
 - The need for national competent authorities to share information with and provide feedback to firms; and
 - Consistency with international standards.
41. The ESAs thank all respondents for taking the time to reply and for the constructive and positive feedback they received. The ESAs have carefully considered all responses and revised the guidelines where appropriate.

- *Ensuring the consistent application of these guidelines by national competent authorities.*

A number of respondents were concerned that these guidelines might not be enough by themselves to ensure the consistent application by national competent authorities of the risk-based approach to AML/CFT supervision. They thought that the ESAs should take further action to foster greater harmonisation of supervisory approaches across Member States, including through benchmarking exercises and by drafting sector-specific guidelines in the medium term. In some cases, for example in relation to the assessment of the ML/TF risk associated with third countries, some respondents felt that more detail was needed to avoid a situation where different competent authorities took divergent views, although others disagreed.

The ESAs are working to foster supervisory convergence and ensure the consistent application of Union law, including in relation to AML/CFT.

Setting regulatory standards such as these guidelines is one element of this work, which is still evolving and includes, among other things, the ESAs' Joint Guidelines on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transactions. Together, these standards serve to create a common understanding among European AML/CFT competent authorities of what the risk-based approach to AML/CFT entails and how it should be applied, while acknowledging that due to the minimum harmonisation nature of Directive (EU) 2015/849, some differences will continue to exist at the national level.

The other element is the monitoring, reviewing and supporting the implementation of these standards. The ESAs have extensive powers to achieve convergence and will focus on ensuring that the new AML/CFT standards are applied consistently across the EU once the regulatory framework has been finalised.

- *Providing feedback to firms*

Several respondents considered that the guidelines should include an explicit requirement for competent authorities to feed back to firms information obtained in the course of their application of the risk-based approach to AML/CFT supervision. They felt that this would serve to clarify supervisory expectations and help pre-empt differences in the assessment of ML/TF risks between competent authorities and firms.

The success of the risk-based approach to AML/CFT supervision depends at least in part on relevant information being available to those responsible for identifying, assessing and managing ML/TF risk. It is therefore important that competent authorities provide feedback to firms on both supervisory findings and their own risk assessment.

However, the need to share information and provide feedback must be balanced against other duties and objectives competent authorities may have, for example in relation to market stability. It cannot, therefore, be an unqualified requirement and competent authorities should determine the most appropriate way to do provide feedback to, and share information with, their sector in this regard.



- *Consistency with international standards*

Several respondents emphasised the need for these guidelines to be consistent with international AML/CFT standards set by the Financial Action Task Force and the Basel Committee on Banking Supervision. This was important to ensure that European AML/CFT supervisors applied international best practice and to facilitate AML/CFT compliance for firms operating on a cross-border basis.

These guidelines take account of international AML/CFT guidelines. They are consistent with the standards set out therein whilst still respecting the particularities of the European market and legal framework, and will be kept under review as these standards evolve.



Summary of responses to the consultation and the ESAs' analysis

Comments	Summary of responses received	The ESAs' analysis	Amendments to the proposals
General comments			
Consistency with international standards	Several respondents asked that the ESAs ensure that the guidelines remain up to date and consistent with international standards as they evolve.	The ESAs have committed to ensuring that the guidelines are consistent with international standards and will keep these guidelines under review. While these guidelines were under consultation, new international guidance on effective AML/CFT supervision was published, which the final version of these guidelines takes into account. Changes made as a result of this review do not change the substance of the consultation draft but have at times led to the inclusion of additional examples or the adjustment of language to ensure the terminology is consistent with that used internationally.	Various, throughout the document
Holistic approach	One respondent stressed the need for competent authorities to take a holistic view of the risk associated with subjects of assessment and adjust their AML/CFT supervision accordingly.	Obtaining a holistic view of different risk factors is an important component of the risk-based approach to AML/CFT supervision. Step 2 (Risk Assessment) has been amended to make this clear.	Step 2 (Risk Assessment), see in particular paragraphs 31 and 32
Duplication	A number of respondents were concerned that the guidelines were repetitive.	The examples provided by respondents contain similar provisions but refer to different situations. In order to ensure a consistent approach, an element of repetition was necessary in those cases. However, in order to streamline the guidelines and avoid the perception of duplication, the guidelines have been restructured and include a new section	New section 'general considerations', see paragraphs 5-13, and consequential changes throughout the document



Comments

Summary of responses received

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bringing together those issues that are relevant to several or all of the four steps described in the guidelines. Cross-references to this section have been included throughout the document where necessary. This is consistent with the approach taken in other ESA guidelines.

Comments on Steps 1-4

Domestic risk factors

One respondent thought that competent authorities should seek to identify all reliable sources on ML/TF risk, irrespective of the quality of the National Risk Assessment. Another listed specific information sources competent authorities should always consider when assessing domestic ML/TF risk.

The guidelines are clear that competent authorities should identify risk factors for information from different sources, of which the National Risk Assessment is one.

There are also sources of information competent authorities should always consider.

The guidelines have been amended to better reflect this.

'domestic risk factors' and 'sources of information', paragraphs 17-19 and 20-21

Foreign risk factors

A number of respondents asked that the guidelines set out clearly which third countries are equivalent for AML/CFT purposes. As drafted, there was a risk that each competent authority would come to a different view of the risk associated with individual third countries, which would create problems for firms operating on an international basis and be conducive to regulatory arbitrage.

These guidelines do not ask competent authorities to carry out an assessment of the extent to which a third country is equivalent for AML/CFT purposes. Instead, the guidelines set an expectation that competent authorities take reasonable steps to understand how their subject of assessment is affected by the specific ML/TF risks it is exposed to as a result of its significant links to another country. To support competent authorities in this assessment and to ensure consistency of approach, these guidelines refer to the ESAs' Joint Guidelines on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF risk associated

None, other than those flowing from the restructuring of these guidelines.



Comments

Summary of responses received

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with individual business relationships, which list geographic risk factors. This approach is in line with the risk-based approach in Directive (EU) 2015/849, where a conscious decision was taken by the legislator to remove references to 'equivalent third countries'.

Risk factors by sector

Several respondents highlighted the need for competent authorities to understand the ML/TF risk associated with individual sectors. Some asked that specific sectors be designated as low risk, and one respondent asked that legal professionals and estate agents be included in the list of sectors.

The guidelines ask competent authorities to understand the risk factors relevant for each financial sector, including by drawing on the risk factors set out in the ESAs' Joint Guidelines on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transactions (see paragraph 16 of these guidelines). Rather than prejudging the outcome of this assessment, these guidelines recognise that variations in the way sectors are organised in different Member States do occur and may have an impact on the ML/TF risk to which these sectors are exposed. They therefore give competent authorities the tools they need to make an informed assessment of the risk associated with their subjects of assessment.

None

Legal professionals and estate agents have not been added to the examples of sectors in this section because they are not credit and financial institutions and are therefore outside of the scope of these



Comments

Summary of responses received

The ESAs' analysis

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Comments	Summary of responses received	The ESAs' analysis	Amendments to the proposals
Information on ML/TF risk at the level of the subject of assessment	One respondent considered that competent authorities should not only consider the nature of the subject of assessment's business, but also the type and nature of the products provided. This was relevant in particular where the product in question was associated with little ML/TF risk.	guidelines as described in Title I. The type and nature of the products provided will affect the ML/TF risk to which a subject of assessment is exposed. The guidelines have been amended to make this clearer.	Paragraph 28
	Some respondents were concerned that the guidelines appeared to suggest that competent authorities obtain information about the ownership and control structure of individual firms within a cluster. This, they felt, was disproportionate.	These guidelines provide that in some cases, competent authorities may group firms that share similar characteristics into 'clusters'. However, clustering is possible only where competent authorities do not know, or have reasonable grounds to suspect, that the risk associated with individual firms in the cluster is significantly different from that associated with other firms in that cluster. This could be the case, for example, where the firm is beneficially owned by a person whose integrity is in doubt. This means that in some cases, obtaining information on the ownership and control structure of individual firms within a cluster may well be warranted. The guidelines have been amended to make this clear.	Paragraphs 7-9 and Paragraph 30
Inherent risk level	One respondent requested that the guidelines make it a requirement that competent authorities use a consistent catalogue of risk factors to assess the ML/TF risk associated with comparable	Consistency is important to ensure that subjects of assessment with similar risk ratings will be subject to similar levels of AML/CFT supervision and oversight. The guidelines have been amended to make clear	Paragraph 15



Comments

Summary of responses received

The ESAs' analysis

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subjects of assessment.

that competent authorities should require similar information for comparable subjects of assessment.

Training

One respondent considered that the guidelines, as drafted, appeared to suggest that a competent authority had to ensure that all staff were suitably qualified to assess whether a firm's AML/CFT systems and controls were adequate, whether or not they had AML/CFT responsibilities. This, they felt, was disproportionate.

To be effective, a competent authority applying the risk-based approach to AML/CFT supervision needs staff who are suitably qualified to make informed judgements and to carry out risk-based AML/CFT supervision in an effective and consistent manner. However, the need for staff to be appropriately skilled is not restricted to AML/CFT supervisors but may include policy and legal staff, among others (see also Article 48(2) of Directive (EU) 2015/849), although their training needs may differ. It is therefore the responsibility of competent authorities to ensure that relevant staff receive training tailored to their respective AML/CFT responsibilities.

'Training', paragraphs 50-53,

Relevant paragraphs have been amended to make this clear.

Feedback and follow-up

Several respondents asked that competent authorities be expected to provide feedback to firms and trade bodies on supervisory findings and risk assessments. They felt that this would help firms better understand supervisory expectations and be conducive to the implementation of a more robust risk-based AML/CFT regime. As drafted, respondents were concerned that the guidelines merely asked competent authorities to consider whether to provide feedback, and that the guidelines did not clearly set out how this information should be shared.

The success of the risk-based approach to AML/CFT supervision rests at least in part on relevant information being made available to those responsible for identifying, assessing and managing ML/TF risk. It is therefore important that competent authorities provide feedback to firms on both supervisory findings and their own risk assessment.

'Feedback', Paragraphs 69-72

However, the need for transparency and information sharing needs to be balanced against other duties and objectives competent authorities may have, for example in relation to market stability. It cannot, therefore, be an unqualified requirement.

The ESAs have amended relevant aspects of these



Comments

Summary of responses received

The ESAs' analysis

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guidelines to make clear their expectation that competent authorities share information and provide feedback, but that competent authorities should determine the most appropriate way to do this.

Responses to questions in Consultation Paper JC/CP/2015/060

Question 1. Do you agree with the way the risk-based approach is described in the guidelines?

All respondents who provided an answer to this question agreed with the description of the risk-based approach.

None

Question 2. Do you agree that the four steps in these guidelines reflect the essential components of a risk-based approach to supervision?

All respondents who provided an answer to this question agreed that the four steps described in the guidelines adequately reflected the components of a risk-based approach to supervision, although some stressed the need for the guidelines to place greater emphasis on competent authorities providing feedback to firms and other stakeholders, including by setting out how such information should be shared. This, they felt, would help inform firms' risk-based approach and be an important prerequisite to an effective, risk-based AML/CFT regime.

The ESAs agree that feedback is important and a relevant source of information for firms looking to establish and maintain effective and risk-based AML/CFT systems and controls.

The guidelines have been amended to make clear the ESAs' expectation that competent authorities provide feedback to stakeholders about the outcomes of risk assessments and supervisory actions, but do not prescribe how competent authorities should do this. This is because competent authorities will have to balance firms' need for guidance and transparency with wider statutory objectives and applicable confidentiality provisions.

'Feedback', paragraphs 69-72

Question 3. Do you consider that the level of detail in the guidelines is appropriate?

Most respondents who provided an answer to this question agreed that the level of detail in these guidelines was appropriate, but some respondents were concerned that the level of detail may not be sufficient to ensure that the guidelines were implemented consistently across EU Member

The ESAs consider that the level of detail provided in these guidelines is appropriate to achieve both supervisory convergence and a consistent approach to AML/CFT supervision, while leaving sufficient flexibility for competent authorities to take account of the specificities of their regime and financial

None



Comments

Summary of responses received

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Amendments to the proposals

States.

market.

The ESAs will work with competent authorities to ensure that these guidelines are applied consistently, and will monitor their implementation and keep them under review with a view to updating them should the need arise.

Question 4: What do you think the impact of these guidelines will be on the financial services industry?

All respondents who provided an answer to this question believed that the introduction of a risk-based approach to AML/CFT supervision would benefit firms and facilitate the adoption of an effective and proportionate risk-based approach to AML/CFT. However, a number of respondents considered that the introduction of the risk-based approach to AML/CFT supervision could create costs in some jurisdictions that were greater than those described in the impact assessment. One respondent suggested that the ESAs should have sought to assess the costs incurred by Member States who had already moved to a more risk-based approach.

The ESAs have carefully considered the cost associated with the implementation of the risk-based approach to AML/CFT supervision, drawing on, among other sources, the experience of competent authorities that already apply a risk-based approach to AML/CFT.

The impact assessment acknowledges that the cost of compliance with these guidelines will be greater in jurisdictions that do not already implement a risk-based approach, but maintains that international experience to date shows these costs will be offset in the medium term through efficiency savings for both competent authorities and firms. While some firms with a high ML/TF risk may be subject to greater regulatory scrutiny as a result of these guidelines, it is likely that a far greater number with lower risk profiles will benefit.

None



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