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29 July 2021

Consultation Paper

Draft Guidelines

On policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/849

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Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 2 November 2021. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

Executive Summary

1. The AML/CFT compliance function is central to financial sector operators' AML/CFT efforts. This is why 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, requires that financial sector operators appoint an AML/CFT compliance officer at the management level. It also provides that financial sector operators that have a management body identify the member of the management body who is ultimately responsible for the implementation of the law, regulations and administrative provisions necessary to comply with AML/CFT requirements.
2. There have, however, been a number of reports that suggest that the requirements set out in Directive (EU) 2015/849 have been implemented unevenly across different sectors and Member States, and that they are not always applied effectively. This can have adverse consequences for the integrity of the EU's financial system.
3. The EBA has a legal duty to prevent the use of the EU's financial system for ML/TF purposes, and a mandate to lead, monitor and coordinate the EU financial sector's fight against ML/TF. Through these guidelines, the EBA aims to achieve a common understanding, by competent authorities and financial sector operators, of financial sector operators' AML/CFT governance arrangements. Specifically, they set clear expectations of the role, tasks and responsibilities of the AML/CFT compliance officer and the management body. A common understanding, which is applied consistently and enforced as necessary, will be key to strengthening the EU's AML/CFT defences.
4. The provisions set out in these guidelines should be applied in a manner that is effective and proportionate to the financial sector operator's type, size, internal organisation, the nature, scope and complexity of its activities, and the ML/TF risks to which the financial sector operator is exposed.
5. They complement, but do not replace, relevant guidelines issued by the European Supervisory Authorities on wider governance arrangements and suitability checks.

Next steps

The draft guidelines are published for a three-months public consultation.

The EBA will finalise these guidelines once the consultation responses have been assessed.

Background and rationale

Background

6. 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, requires that financial sector operators have in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing (ML/TF). In accordance with Article 8(4) of this Directive, where appropriate with regard to the size and nature of the business, financial sector operators have to appoint a compliance officer at the management level. Article 46(4) further provides that financial sector operators that have a management body also identify the member of the management body who is ultimately responsible for the implementation of the law, regulations and administrative provisions necessary to comply with AML/CFT requirements.
7. These provisions complement requirements in other sectoral laws that relate to financial sector operators' governance and risk management systems, and suitability requirements for senior function holders.
8. In 2017, in its Supranational Risk Assessment, the European Commission asked the ESAs to develop guidance to clarify the role of AML/CFT compliance officers in financial sector operators. At the time, the ESAs considered that existing guidelines on internal governance were sufficient to fulfil the Commission's request.
9. There have, however, been a number of reports that suggest that the requirements set out in Directive (EU) 2015/849 have been implemented unevenly across different sectors and Member States, and that they are not always applied effectively. This can have adverse consequences for the integrity of the EU's financial system.
10. For example,
 - a) In their 2017 Joint Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector¹, the European Supervisory Authorities (ESAs) considered that the Union's financial sector was exposed to money laundering and terrorist financing (ML/TF) risks arising from ineffective AML/CFT systems and controls. Findings from national supervisors pointed to a number of causes for these shortcomings. These included senior management of some financial sector operators affording low priority to AML/CFT issues, in particular when paired with a corporate culture that pursues profits at the expense of robust compliance. This lack of senior management buy-in meant that ensuring adequate resources and hiring suitably

¹ JC/2017/07 <https://eba.europa.eu/sites/default/documents/files/documents/10180/1759750/cedce61c-279b-4312-98f1-a5424a1891ad/ESAS%20Joint%20Opinion%20on%20the%20risks%20of%20money%20laundering%20and%20terrorist%20financing%20affecting%20the%20Union%20E2%580%2599s%20financial%20sector%20%2528JC-2017-07%2529.pdf?retry=1>

qualified staff for AML/CFT roles was not seen as a priority, which appeared to affect the quality of financial institution's AML/CFT controls.

- b) The 2019 Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions² found that many credit institutions in the Commission's sample had not established adequate risk management systems and controls. The analysis revealed deficiencies in credit institutions' anti-money laundering/countering the financing of terrorism-related governance arrangements (including the 'three lines of defence'), their internal reporting, group policies and senior managements' responsibilities and accountability.
- c) The EBA found in its 2019/2020 AML/CFT review of competent authorities approaches to the AML/CFT supervision of banks³ that AML/CFT supervisors in some Member States did not interact with financial institutions' senior management because there was no legal or regulatory requirement in those Member States to appoint an AML/CFT compliance officer at a level that was sufficiently senior to report to the financial institution's senior management body. As a result, in those Member States, there was a risk that AML/CFT supervision may not be effective.
- d) The EBA noted in its 2021 Opinion on the risks of money laundering and terrorist financing affecting the European Union's financial sector⁴ that there is still a sizeable proportion of CAs that considered that the quality of some controls has remained poor and many CAs identified persisting deficiencies in some key controls.

Rationale

11. The EBA has a legal duty to prevent the use of the EU's financial system for ML/TF purposes, and a mandate to lead, monitor and coordinate the EU financial sector's fight against ML/TF. Through these guidelines, the EBA aims to achieve a common understanding, by competent authorities and financial sector operators, of the role and responsibilities of

- a. the AML/CFT compliance officer and
- b. the management body with regards to AML/CFT or the senior manager where no management body exists.

12. A common understanding of the role and responsibilities of AML/CFT compliance officers and the management body or senior manager, which is applied and enforced consistently, is important to

² https://ec.europa.eu/info/sites/info/files/report_assessing_recent_alleged_money-laundering_cases_involving_eu_credit_institutions.pdf

³

https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20acts%20to%20improve%20AML/CFT%20supervision%20in%20Europe/Report%20on%20CA%20approaches%20to%20AML%20CFT.pdf

⁴

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2021/963685/Opinion%20on%20MLTF%20risks.pdf

ensure that financial sector operators in all Member States implement sound and effective AML/CFT systems and controls and to protect the EU's financial sector from financial crime.

13. This section explains the reasoning behind the provisions in these guidelines.

Interaction with other guidelines

14. The guidelines complement the following ESAs Guidelines:

- EBA Guidelines on internal governance under Directive 2013/36/EU⁵;
- the joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders⁶;
- the ESMA Guidelines on certain aspects of the MiFID II compliance function requirements⁷;
- the EIOPA Guidelines on system of governance⁸;
- the EBA Guidelines on outsourcing arrangements⁹;
- the EIOPA Guidelines on outsourcing to cloud service providers¹⁰;
- the ESMA Guidelines on outsourcing to cloud service providers¹¹; and
- the forthcoming EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and Financial Intelligence Units under Directive 2013/36/EU.

Proportionality

15. This section describes the subject matter and scope of the Guidelines. It also introduces definitions for the purpose of the Guidelines, in particular the definition of concepts such as the 'management body', 'the management body in its supervisory function', 'the management body in its management function', in line with the definitions in EBA Guidelines on internal governance under Directive 2013/36/EU¹², ESMA Guidelines on certain aspects of the MiFID II compliance function requirements¹³ and EIOPA Guidelines on system of governance¹⁴.

⁵ EBA/GL/2021/05

⁶ ESMA35-36-2319 EBA/GL/2021/06

⁷ ESMA35-36-1946

⁸ EIOPA-BoS-14/253 EN

⁹ EBA-GL-2019-02

¹⁰ EIOPA-BoS-20-002

¹¹ ESMA50-157-2403

¹² EBA/GL/2021/05

¹³ ESMA35-36-1946

¹⁴ EIOPA-BoS-14/253 EN

16. These guidelines apply to financial sector operators as defined in Article 4(1a) of Regulation EU (No) 1093/2010¹⁵.

Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT

17. This section sets expectations regarding the role and responsibilities of financial sector operators' management body or, where no management body exists, the role and responsibilities of the senior manager in relation to AML/CFT.

18. Evidence from the EBA's work on AML/CFT suggests that failure by financial sector operator's management body to consider ML/TF risks can give rise to serious AML/CFT compliance failures. Contrariwise, the active involvement of the highest hierarchical level of the financial sector operators in AML/CFT matters can ensure more effective prevention of ML/TF risks by a financial sector operator. The Guidelines therefore specify, in Guideline 4.1, the duties and tasks of the management body in the AML/CFT framework.

19. Without prejudice to the overall and collective responsibility of the management body, the Guidelines also specify the tasks and role of the member of the management board or senior manager responsible for AML/CFT as referred to in Article 46(4) of Directive (EU) 2015/849. This person should be the main contact point of the AML/CFT compliance officer within the management body and should ensure that any concerns raised by the AML/CFT compliance officer are duly addressed by the management body. This person should also ensure that recommendations approved by the management body result in adequate and necessary action to remedy any AML/CFT issues or breaches identified.

Role and responsibilities of the AML/CFT compliance officer

20. In its Report on competent authorities' approaches to the anti-money laundering and countering the financing of terrorism supervision of banks¹⁶, the EBA found that competent authorities in some Member States do not interact with financial sector operators' management bodies. This is because there is no legal or regulatory requirement in those Member States to appoint an AML/CFT compliance officer at a level that is sufficiently senior to report to the financial sector operator's management body. That is why Guideline 4.2 specifies the need to appoint an AML/CFT compliance officer at a level which entails the powers to propose, on his/her own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function. Guidelines 4.2 also specifies the suitability requirements for the role of AML/CFT compliance officer as well as explain the roles and responsibilities of the person employed in this role.

¹⁵ REGULATION (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

¹⁶

https://eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20acts%20to%20improve%20AML/CFT%20supervision%20in%20Europe/Report%20on%20CA%20approaches%20to%20AML%20CFT.pdf

21. Taking into consideration the diversity of financial sector operators under Directive (EU) 2015/849, the Guidelines are drafted so that they can adjust in a way that is commensurate with the structure of a financial sector operator and its exposure to ML/TF risks. These Guidelines do not require financial sector operators to appoint a separate AML/CFT compliance officer as those functions can be combined with other management functions as long as minimum criteria specified in the Guideline 4.2 are observed.
22. Due to the territorial scope of the AML/CFT regulatory framework, and in particular the fact that the regime for reporting of suspicious transactions is organised at domestic level, with a requirement for financial sector operators to report to the national Financial Intelligence Unit (FIU) of the Member State in which the financial sector operator is established, the AML/CFT compliance officer should normally be located in the country of establishment of the financial sector operator.
23. Findings from national AML/CFT supervisors, the EBA's supervisory convergence work, and from the European Commission's work on AML/CFT suggest that the internal reporting of ML/TF risks from business lines and control functions to the management body is not always adequately established or applied. Information reaching the management body is also not always sufficiently comprehensive to enable informed decisions. Guideline 4.2 therefore proposes a list of information that should be at least included in the activity report of the AML/CFT compliance officer to the management body.

Organisation of the AML/CFT compliance function at group level

24. The AML/CFT compliance officer is part of a financial service operator's internal policies and controls framework under Article 8 of Directive (EU) 2015/849 and under Article 45 of Directive (EU) 2015/849, to effectively mitigate ML/TF risks at both entity level and group level.
25. Where a financial services operator is part of a group, a Group AML/CFT compliance officer in the parent company should be appointed to ensure the establishment and implementation of effective group-wide AML/CFT policies and procedures, as specified in Guideline 4.3. This is because the analysis of high-profile AML/CFT scandals involving EU financial institutions suggests that in large cross-border banking groups, AML/CFT systems and controls deficiencies were not identified or acted upon due in part to inadequate management information and lack of reporting lines between local offices and the management body of the credit institution in another Member State. Guideline 4.3 therefore sets out specific roles and responsibilities and clarify the reporting lines in respect of the role of the AML/CFT compliance officer function at a group level, in order to ensure that shortcomings in the AML/CFT framework affecting the entire group or a large part of the group are addressed effectively.

Review of the AML/CFT compliance function by competent authorities

26. In order to ensure the supervision of the adequate and effective implementation of AML/CFT requirements by financial sector operators, competent authorities should be able to request information to test the adequacy and effectiveness of AML/CFT compliance officer function in line



with these and other ESAs guidelines¹⁷, while respecting differences with the mandates of prudential supervisors. Guideline 4.4 sets out how this should be done).

27. Provisions of Guideline 4.4 are consulted through those draft guidelines on policies and procedures in relation to compliance manager and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI of Directive (EU) 2015/849, but will be integrated in the revised Risk-based AML/CFT supervision guidelines.

¹⁷ EBA/GL/2021/05, ESMA35-36-2319 EBA/GL/2021/06, ESMA35-36-1946, EIOPA-BoS-14/253 EN, [add reference of final AML Cooperation GLs once available](#)



Draft guidelines



EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/849



1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹⁸. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial sector operators must make every effort to comply with the guidelines.
2. Guidelines set the EBA 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 as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).



2. Subject matter, scope and definitions

Subject matter

5. These guidelines further specify the role, tasks and responsibilities of the AML/CFT compliance officer, the management body and senior manager in charge of AML/CFT compliance as well as internal policies, controls and procedures, as referred to in Article 8, and Article 45 and Article 46 of Directive (EU) 2015/849.

Scope of application

6. These guidelines apply to financial sector operators as defined in Article 4(1a) of Regulation (EU) No 1093/2010¹⁹.
7. These guidelines apply to all existing management body structures irrespective of the allocation of competences in accordance with national company and of the management body structure.

Addressees

8. These guidelines are addressed to competent authorities as defined in Article 4(2) (iii) of Regulation (EU) No 1093/2010. These guidelines are also addressed to financial sector operators as defined in Article 4(1a) of that Regulation, which are credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849.

Definitions

9. Unless otherwise specified, terms used and defined in Directive (EU) 2015/849 have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Management body

means a financial sector operator's body or bodies, which are appointed in accordance with national law, which are empowered to set the financial sector operator's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively

¹⁹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).



direct the business of the financial sector operator.

Management body in its supervisory function

means the management body acting in its role of overseeing and monitoring management decision-making.

Management body in its management function

means the management body responsible for the day-to-day management of the financial sector operator.



3. Implementation

Date of application

10. These Guidelines apply from xx month yyyy.

4. Guidelines

4.1 Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT

4.1.1 Approval of the policies, controls and procedures

11. Where a management body exists, AML/CFT policies, controls and procedures should be approved by management body in accordance with Article 8(5) of Directive (EU) 2015/849.

4.1.2 Role of the management body in its supervisory function in the AML/CFT framework

12. The management body in its supervisory function should be responsible for setting, approving and overseeing the implementation of an adequate and effective internal governance and internal control framework to ensure compliance with applicable requirements in the context of the prevention of money laundering and terrorism financing (ML/TF). To this end it should possess adequate collective knowledge, skills and experience to be able to understand the ML/TF risks related to the financial sector operator's activities and business model, including the knowledge of the national legal and regulatory framework relating to the prevention of ML/TF.
13. In addition to ESAs guidelines on internal governance²⁰, as applicable, a financial sector operator's management body in its supervisory function should perform the following specific AML/CFT tasks:
 - a) being informed of the results of the business-wide ML/TF risk assessment;
 - b) overseeing the implementation of the AML/CFT policies and procedures and the extent to which these are adequate and effective in light of the ML/TF risks to which the financial sector operator is exposed and taking appropriate steps to ensure remedial measures are taken where necessary;
 - c) reviewing at least once a year the activity report of the AML/CFT compliance officer and obtaining interim updates more frequently for activities that expose financial sector operators to higher ML/TF risks;

²⁰ EBA Guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05; ESMA Guidelines on certain aspects of the MiFID II compliance function requirements: ESMA35-36-1946; EIOPA Guidelines on system of governance: EIOPA-BoS-14/253 EN



- d) assessing the effective functioning of the AML/CFT compliance function, at least once a year, by assessing, in particular, the adequacy of the human and technical resources allocated to the AML/CFT compliance officer;
14. The management body in its supervisory function should ensure that the member of the management body mentioned in section 4.1.4 or the senior manager who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Directive (EU) 2015/849 mentioned in section 4.1.5:
- a) has adequate knowledge, skills and experience regarding the identification, assessment and management of the ML/TF risks, and the implementation of AML/CFT policies, controls and procedures;
 - b) has a good understanding of the financial sector operator's business model and the sector in which the financial sector operator is operating, and the extent to which this business model exposes the financial sector operator to ML/TF risks;
 - c) is informed in a timely manner of decisions that may affect the risks to which the financial sector operator is exposed.
15. The management body in its supervisory function, should have access to and take into account data and information of sufficient detail and quality to enable it to discharge its AML/CFT functions effectively. At a minimum, the management body in its supervisory function should have timely and direct access to the activity report of the AML/CFT officer, the report of the internal audit function, the findings and observations of external auditors, where applicable, as well as the findings of the competent authority, relevant communications with the FIU and supervisory measures or sanctions imposed.

4.1.3 Role of the management body in its management function in the AML/CFT framework

16. In relation to internal policies, controls and procedures referred to in Articles 8(3) and 8(4) of Directive (EU) 2015/849, a financial sector operator's management body in its management function should have the following AML/CFT tasks and responsibilities:
- a) responsibility for implementing the organisational and operational structure necessary to discharge the AML/CFT strategy defined by management body, paying particular attention to the adequacy of the human and technical resources allocated to the AML/CFT compliance officer function, the need for a dedicated AML/CFT unit to assist the AML/CFT compliance officer;
 - b) responsibility for implementing the internal AML/CFT policies and procedures;
 - c) approving the AML/CFT compliance officer's activity report and ensuring its completeness, seriousness and accuracy;



- d) ensuring adequate, timely and sufficiently detailed AML/CFT reporting to the competent authority;
- e) where some operational functions of the AML/CFT compliance officer are outsourced, approving the service provider in line with the outsourcing written agreement and with the ESAs guidelines on outsourcing arrangements²¹ and ESAs guidelines on Internal Governance²², and receiving regular reporting from the service provider to inform the management body.

4.1.4 Identification of the member of the management body responsible for AML/CFT

- 17. The member of the management body to be identified in accordance with Article 46(4) of Directive (EU) 2015/849 should in particular have adequate knowledge, skills and experience regarding the identification, assessment and management of the ML/TF risks, and the implementation of AML/CFT policies, controls and procedures, with a good understanding of the financial sector operator's business model and the sector in which the financial sector operator operates, and the extent to which this exposes the financial sector operator to ML/TF risks.
- 18. The member of the management body referred to in Article 46(4) of Directive (EU) 2015/849 should have sufficient time and resources to perform his/her AML/CFT duties effectively. They should report comprehensively about their tasks as mentioned in section 4.1.6 and regularly inform and where necessary without undue delay the management body in its supervisory function.

4.1.5 Identification of a senior manager responsible for AML/CFT where no management body is in place

- 19. Where no management body is in place, financial sector operators should appoint the senior manager who is ultimately responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Directive (EU) 2015/849, among the senior managers directing the business of the financial sector operator.
- 20. The senior manager referred to in paragraph 19 should be given sufficient time and resources to perform their duties effectively.

4.1.6 Tasks and role of the member of the management body or senior manager responsible for AML/CFT

- 21. Without prejudice of the overall and collective responsibility of the management body, when appointing the member of the management body, or the senior manager, who is responsible for the implementation of the AML/CFT laws, regulations and administrative provisions,

²¹ EBA Guidelines on outsourcing arrangements: EBA/GL/2019/02; EIOPA Guidelines on outsourcing to cloud service providers: EIOPA-BoS-20-002; ESMA Guidelines on outsourcing to cloud service providers: ESMA50-157-2403

²² EBA Guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05 ;ESMA Guidelines on certain aspects of the MiFID II compliance function requirements: ESMA35-36-1946, EIOPA Guidelines on system of governance: EIOPA-BoS-14/253 EN



financial sector operators should take into account potential conflicts of interest and take steps to avoid or mitigate them.

22. The member of the management body, or the senior manager responsible for AML/CFT should ensure that the entire management body, where it exists, is aware of the impact of ML/TF risks on their business-wide risk profile. His/her responsibilities in view of performance of the task as referred to in Article 46(4) of Directive (EU) 2015/849, and in particular in relation to the implementation of policies, controls and procedures to mitigate and manage effectively the risks of ML/TF as referred to in Article 8 of that Directive, should at least include, but are not be limited to the following:
- a) ensuring that the AML/CFT policies, procedures and internal control measures are adequate and proportionate, taking into account the characteristics of the financial sector operator and the ML/TF risks to which the financial sector operator is exposed;
 - b) ensuring that the management body has taken the responsibility to implement the AML/CFT policies, procedures and internal control measures;
 - c) carrying out with the management body, the assessment whether it would not be appropriate to appoint a separate AML/CFT compliance officer at management level, as mentioned in section 4.2.4, with its conclusions and relevant recommendations submitted to the management body for its consideration;
 - d) supporting the management body in its management function, where it exists, assess the need for a dedicated AML/CFT unit to assist the AML/CFT compliance officer in carrying out his/her functions, taking into account the scale and complexity of the financial sector operator's operations and exposure to the ML/TF risks. Staff within this unit should possess the necessary expertise, skills and knowledge to assist the AML/CFT compliance officer, who should be involved in their recruitment.
 - e) ensuring that the management body is provided with sufficiently comprehensive and timely information and data on ML/TF risks and AML/CFT compliance, which is necessary to allow the management body, be it in its supervisory function or in its management function, to carry out the role and functions entrusted to it;
 - f) ensuring that there is periodical reporting to the management body on the activities carried out by the AML/CFT compliance officer and that the management body receives information on the most relevant or significant communications and engagements between the financial sector operator and the national competent authority and FIU, without prejudice to the confidentiality of STRs, and any actions taken by the competent authority against the financial sector operator as well as with the prudential supervisor when such engagement is related to ML/TF;
 - g) making recommendations to the management body and, where these recommendations are approved by the management body, ensuring that adequate and necessary action is taken to



remedy any AML/CFT issues or breaches identified and to report to the management body of the progress made in implementing the remedial action;

- h) ensuring that the AML/CFT compliance officer (i) has direct access to all the information necessary to perform his tasks, (ii) has sufficient human and technical resources and tools to be able to adequately perform the tasks assigned to him/her, and (iii) is well-informed of the AML/CFT-related incidents brought to light by the internal control systems and of the shortcomings in implementing the AML/CFT provisions found by the national and foreign supervisory authorities.
23. The member of the management body or senior manager responsible for AML/CFT should be the main contact point for the AML/CFT compliance officer within the management. In addition, the member of the management body or senior manager responsible for AML/CFT should ensure that any AML/CFT concerns that the AML/CFT compliance officer has are duly addressed and, where this is not possible, are duly considered by the management body. If senior management decides not to follow the advice of the AML/CFT compliance officer, it should duly motivate and record its decision in light of the risks raised by the AML/CFT compliance officer.

4.2 Role and responsibilities of AML/CFT compliance officer

4.2.1 Appointment of the AML/CFT compliance officer

24. The AML/CFT compliance officer as referred to in Article 8(4)(a) of Directive (EU) 2015/849 should be appointed at a level which entails the powers to propose, on his/her own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function.
25. Where the management body appoints an AML/CFT compliance officer as set out in paragraph 16, the management body should, taking into account the scale and complexity of the financial sector operator's operations and its risk exposure to ML/TF, determine whether there is a need for a separate role of the AML/CFT compliance officer carried out on a full-time basis or whether this role may be carried out by an employee or an officer in addition to his/her existing functions within the financial sector operator. Any such decision should be based on the principle of proportionality, taking into consideration, among others, the factors below in section 4.2.2.
26. Where the functions of the AML/CFT compliance officer are to be entrusted to an officer or employee who already has other duties or functions within the financial sector operator, the management body should consider possible conflicts of interest and take the steps necessary to avoid or, where this is not possible, to manage these. The management body should ensure that that person can allocate sufficient time to the functions of AML/CFT compliance officer.



27. The AML/CFT compliance officer should normally be located and work in the country of establishment of the financial sector operator.
28. In some situations, where commensurate with the ML/TF risk to which the financial sector operator is exposed and permitted under the national law, the AML/CFT compliance officer may be located in another jurisdiction. In those cases, the financial sector operator should appoint the AML/CFT compliance officer within the governance arrangements of that financial sector operator. The financial sector operator should have the necessary systems and controls in place to ensure that the AML/CFT compliance officer has the necessary knowledge and understanding of local AML/CFT laws and regulations and can equally carry out its functions in an effective and independent manner. The financial sector operator should ensure that the AML/CFT compliance officer has access to all internal documents and systems required for performing its tasks and is readily available to meet any requests from the local FIU and the competent authority for meetings and examinations. The financial sector operator should also demonstrate to its competent authority that the measures it has put in place in this regard are adequate and effective.
29. The AML/CFT compliance officer should be allowed to assign his/her tasks as set out in section 4.2.4 to other officers and employees acting under his/her direction and supervision, under the condition that ultimate responsibility for the effective fulfilment of those tasks remains with the AML/CFT compliance officer.
30. In order to ensure the independence of the AML/CFT compliance officer, the following conditions should be met:
 - a) notwithstanding the overall responsibility of members of the management body for the financial sector operator, the AML/CFT compliance officer should not be subordinate to a person who has responsibility for managing any of the activities the AML/CFT compliance officer monitors;
 - b) the financial sector operator has put in place processes to ensure that the AML/CFT compliance officer has at all times unrestricted and direct access to all information that is necessary to the performance of his/her function. The decision on which information he/she needs to access in the regard should be the AML/CFT compliance officer's alone;
 - c) the AML/CFT compliance officer should have an independent reporting line to the management body, where a management body exists in the financial sector operator's structure



4.2.2 Proportionality criteria for the appointment of a separate AML/CFT compliance officer

31. A financial sector operator should appoint a AML/CFT compliance officer unless they are a sole trader or have a very limited number of employees or members.
32. When the management body decides not to appoint a separate AML/CFT compliance officer, the management body should document the reasons for its decision and justify it taking into account at least the following criteria:
 - a) nature of the financial sector operator's business and the ML/TF risks associated therewith, taking into account its geographical exposure, customer base, distribution channels and products and services offering;
 - b) the size of its operations in the jurisdiction, the number of its customers the number and volume of its transactions and the number of its full-time equivalent employees;
 - c) the legal form of the financial sector operator, including whether the financial sector operator forms part of a group.
33. Where a separate AML/CFT compliance officer is not appointed, the financial sector operators should organise the performance of the AML/CFT compliance officer tasks (see below section 4.2.4 on Tasks and role of the AML/CFT compliance officer) by either the member of the management body as referred to in section 4.1.4 or the senior manager responsible for AML/CFT as referred to in section 4.1.5, or by another officer at management level also in charge of other tasks or by outsourcing certain operational functions as mentioned in section 4.2.6, or by a combination of the previous options.
34. When an employee is acting as the AML/CFT compliance officer for two or more entities of the group or is charged with other tasks (e.g. legal advice), the financial sector operator should ensure that these multiple appointments still allow the AML/CFT compliance officer to fulfil his/her functions in an effective manner. The AML/CFT compliance officer should operate for different entities only if the entities are part of the same group. However, due to the nature of the Collective Investment Sector, the AML/CFT compliance officer should be in a position to service several parties which are not necessarily part of the same group.

4.2.3 Suitability, skills and expertise

35. In relation to employee screening referred to in Article 8(4) (a) of Directive (EU) 2015/849, financial sector operators should take the measures necessary to verify prior to the appointment whether the AML/CFT compliance officer possesses:



- a) the reputation, honesty and integrity necessary to perform his/her functions in addition to the criteria where the AML/CFT compliance officer as the Head of Internal Control function is a key function holder, in line with ESAs Guidelines on assessment of suitability²³, where applicable;
 - b) the necessary AML/CFT skills and expertise, including knowledge of the applicable legal and regulatory AML/CFT framework, and the implementation of AML/CFT policies, controls and procedures;
 - c) sufficient knowledge and understanding of the ML/TF risks associated, with relevant experience regarding the identification, assessment and management of the ML/TF risks, if possible with the business model of the financial sector operator;
 - d) the sufficient availability needed to perform his/her functions effectively, independently, and autonomously.
36. Financial sector operators should establish a sound business continuity management and ensure that the AML/CFT compliance function operates on an ongoing basis. The financial sector operator should ensure that its business continuity procedure or plan also caters for the possibility of having the AML/CFT compliance officer discontinue with his/her functions, and the availability of a delegate with appropriate skills and expertise to take over the functions of AML/CFT compliance officer in the event that the office holder is absent for a period of time or the integrity of the AML/CFT compliance officer is called into question. The AML/CFT compliance officer should contribute to business continuity procedures/plan by highlighting those procedures and systems that are indispensable. The business continuity arrangements for AML/CFT should be well integrated into the financial sector operator's overall business continuity plan.

4.2.4 Tasks and role of the AML/CFT compliance officer

- 37. The role and responsibilities of the AML/CFT compliance officer should be clearly defined and recorded.
- 38. The AML/CFT compliance officer should be granted unconditional and direct access to all information as set out in paragraph 30.

a. Development of a risk assessment framework

- 39. In relation to the identification and assessment of risk referred to Article 8(1) of Directive (EU) 2015/849, the AML/CFT compliance officer should develop and maintain an ML/TF risk assessment framework for business wide and individual ML/TF risk assessments in line with the EBA Revised Guidelines on ML/TF Risk Factors²⁴.

²³ Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders: ESMA 35-36-2319 EBA/GL/2021/06

²⁴ EBA Revised Guidelines on ML/TF Risk Factors: EBA/GL/2021/02



40. The AML/CFT compliance officer should report the results of the business-wide and individual ML/TF risk assessment to the management body, via the member of the management body or to the senior manager responsible for AML/CFT. The AML/CFT compliance officer should propose to the management body the measures to take to mitigate those risks. A new activity should not be undertaken until adequate resources to understand and manage the associated risks are available and effectively implemented.

b. Prepare policies and procedures

41. The AML/CFT compliance officer should ensure that adequate policies and procedures are put in place, maintained and implemented effectively. The policies and procedures should build on and be commensurate to the ML/TF risks that the financial sector operator has identified. The AML/CFT compliance officer should at least:

- a) make proposals as to the AML/CFT policies and procedures to be adopted by the financial sector operator, as well as the controls and systems to be implemented by the financial sector operator under Article 8(4) of Directive (EU) 2015/849;
- b) ensure that AML/CFT policies and procedures are implemented effectively by the financial sector operator as explained in section d. on Monitoring compliance;
- c) ensure that AML/CFT policies and procedures are reviewed regularly and amended where necessary;
- d) propose how to address any change in legal or regulatory requirements or in ML/TF risks as well as how to best address deficiencies or shortcomings identified through monitoring or supervisory activities.

42. The policies, controls and procedures referred to in Article 8(4) of Directive (EU) 2015/849 should at least include the following:

- a) the business-wide and individual ML/TF risk assessment methodology;
- b) customer due diligence and customer acceptance process as explained below in section c. on Customers, in particular for high-risk customers;
- c) internal reporting (analysis of unusual transactions) and the submission of STRs to the FIU;
- d) record keeping; and
- e) provisions for monitoring AML/CFT compliance as in section d. on Monitoring compliance.

c. Customers, including high-risk customers



43. The AML/CFT compliance officer should prepare policies and procedures to comply with the customer due diligence requirements, including those provided by the EBA Revised Guidelines on ML/TF Risk Factors²⁵.
44. The AML/CFT compliance officer should exercise an advisory role before a final decision is taken by senior management on onboarding new high risk customers or re-classifying existing customers into the high risk category, unless the power to approve the establishment of such relationships is entrusted directly to the AML/CFT compliance officer.

d. Monitoring compliance

45. The AML/CFT compliance officer should have the responsibility for ongoing monitoring of the implementation of the measures, policies, controls and procedures adopted to ensure the financial sector operator's compliance with its AML/CFT obligations. The AML/CFT compliance officer should ensure the effectiveness of AML/CFT controls applied by business lines and internal units.
46. The AML/CFT compliance officer should carry out sample testing to establish levels of compliance.
47. The AML/CFT compliance officer should monitor that the AML/CFT framework is assessed periodically and updated where necessary and in any case when deficiencies are detected, new risks emerge or the legal or regulatory framework has changed.
48. The AML/CFT compliance officer should make recommendations to the management body on measures in relation to any supervisory examination by the competent authority and the findings resulting there from. Depending on the ML/TF risk exposure and the size of the financial sector operator, the AML/CFT compliance officer should also make recommendation on audits, whether carried out by the financial sector operator's internal audit function, an external auditor or a third party appointed by the financial sector operator and the findings resulting there from.

e. Reporting to the management body

49. The AML/CFT compliance officer should advise the management body directly or via the member of the management body, or the senior manager, responsible for AML/CFT on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should provide their assessment of the possible impact of any changes in the legal or regulatory environment on the financial sector operator's activities and compliance framework.

²⁵ Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849; EBA/GL/2021/02



50. The AML/CFT compliance officer should bring to the attention of the member of the management body or the senior manager responsible for AML/CFT:
- a) the areas where the operation of AML/CFT controls should be implemented or improved;
 - b) the appropriate improvements;
 - c) a progress report of any significant remedial programs, at least once a year as part of the activity report referred to in paragraph 52 and on ad-hoc basis or periodically depending on the intensity of the improvements, to inform these bodies about the level of exposure to the ML/FT risks, and the measures taken or recommended to reduce and effectively manage these risks.
51. The financial sector operator needs to stand ready to share a copy of the activity report referred to in paragraph 52 with the competent authority.
52. The activity report by the AML/CFT compliance officer should be proportionate to the scale and nature of the activities of the financial sector operator, and contain at least the following information:
- 1) On ML/TF risk assessment:
 - a) An explicit statement of whether or not the business-wide ML/TF risk assessment or a review of it as referred to in Article 8(1) of Directive (EU) 2015/849 was required by the competent authority for the reporting year;
 - b) A summary of the main findings of the risk assessment as referred to in Article 8(1) of Directive (EU) 2015/849, where such an update has been performed in the past year;
 - c) A description of any changes related to the method used by the financial sector operator to assess the individual customer risk profile of the business relationship highlighting to which extent it is aligned to the financial sector operator's business-wide ML/TF risk assessment;
 - d) The repartition of customers by risk category and on-boarding flow, drawn from units' summary reports, including the number of outdated customer reviews by risk category;
 - e) A structured overview of the work carried out by the AML/CFT compliance officer function in the past year, including information and statistical data on:
 - i) the nature, number and amount of the unusual transactions detected;
 - ii) the nature, number and amount of the unusual transactions effectively analysed;
 - iii) the nature, number and amount of the reports of suspicious transactions or activity to the FIU (distinguished by country of operations);
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- iv) aggregate information on customer relationship ceased by the financial sector operator due to AML/CFT concerns;
 - v) number of requests for information received from the FIU;
 - vi) number of judicial requests/subpoenas received;
 - vii) number of orders requiring the postponement of a transaction's execution;
 - viii) number of replies provided to FIU and decisions taken with respect to these customers, i.e. whether the business relationship with these customers was blocked, suspended, terminated;
 - ix) summary of statistical data or key risk indicators relating to ML/FT risks so as to provide an accurate picture of the risks of ML/TF to which the financial sector operator is exposed through its customers, countries or geographic areas, products, services, transactions or delivery channels, taking into account the EBA Revised Guidelines on ML/TF Risk Factors²⁶.
- f) A prospective view of the ML/TF risks and AML/CFT framework the financial sector operator intends to deploy to address those risks;
- 2) On resources:
- g) A brief description of the AML/CFT organisation structure and, where appropriate, of any significant changes made in the past year and of the underlying reasoning, distinguishing in particular between the organisation of the supervision by the persons who are in direct contact with customers or instructed with carrying out their transactions, and the organisation of the AML/CFT compliance function;
 - h) A brief description of the human and technical resources allocated to AML/CFT compliance function by the financial sector operator, and the confirmation that these resources are sufficient or, if that is not the case, an assessment of the additional resources that are deemed necessary to enable the financial sector operator to meet its AML/CFT obligations;
 - i) Where applicable, the list of AML/CFT processes outsourced with a description of the oversight performed by the financial sector operator on those activities; and a confirmation that the outsourcing arrangements are adequate to ensure ongoing compliance with AML/CFT regulatory requirements and financial sector operator's internal rules;
- 3) On policies and procedures:

²⁶ EBA Revised Guidelines on ML/TF Risk Factors: EBA/GL/2021/02



- j) Brief information on important measures taken and procedures adopted during the year, including the follow-up of the recommendations, problems, shortcomings and irregularities identified in the past as well as the new problems, shortcomings and irregularities identified and proposed corrective measures;
- k) The nature and number of the compliance monitoring actions undertaken to assess application of the financial sector operator's AML/CFT policies, controls and procedures by the financial sector operator's employees, agents, distributors and service providers, as well as on the adequacy of any monitoring tools employed by the financial sector operator for AML/CFT purposes;
- l) The nature and amount of the AML/CFT, training activities completed, planned, not completed, as well as the staff concerned by those training activities; training plan for next year to assess the adequacy of the training and education provided;
 - i) number of training hours by type of employees and by type of department/function and percentage of employees having completed the training;
 - ii) date of participation in a seminar, title and duration of the seminar and modality of distribution (i.e. e-learning, online and face to face) as well as the names of trainers;
 - iii) whether the lecture/seminar was prepared within the financial sector operator or offered by an external organisation or consultants; and
 - iv) summary information for the program/content of the lectures/seminars.
- m) A description of any other measures adopted by the AML/CFT compliance officer;
- n) Any other useful information on the operation of the AML/CFT compliance officer function and the measures to prevent ML/TF which the AML/CFT compliance officer considers may be of interest to bring to the attention of the management body;
- o) Plan of activities of the AML/CFT compliance officer function for the subsequent year;
- p) Supervisory activities, including communications to the financial sector operator, carried out by the competent authority, reports submitted, breaches identified and sanctions imposed together with how the financial sector operator is undertaking to remedy the breaches identified and the stage at which the remedial action is, without prejudice to any other periodical report that may be required in the case of supervisory activity or remedial action.

f. Reporting of suspicious transactions



53. In relation to the AML/CFT compliance officer's obligation under Article 33(2) of Directive (EU) 2015/849 to transmit information referred to in paragraph (1) of that Article, he/she should make sure that other members of staff whose assistance is sought with the discharge of aspects of this function have the skills, knowledge and suitability to assist with that task. Due consideration should be given to the sensitivity and confidentiality of information that may be disclosed and the non-disclosure obligations the financial sector operator has to adhere to.
54. When the AML/CFT compliance officer transmits information to the FIU in accordance with Article 33(2) of Directive (EU) 2015/849, she/he should ensure that the information is transmitted in a format and through means which comply with any guidelines issued by the national FIU, in an effective manner. As part of his/her role under that provision, the AML/CFT compliance officer should:
- a) understand the functioning and design of the transaction monitoring system, including scenarios covered according to the ML/TF risks posed to the financial sector operator and set procedures to handle alerts;
 - b) receive reports from the financial sector operator's employees, agents or distributors, or otherwise generated reports by the financial sector operator's systems, of knowledge or suspicion of ML/TF, or that a person may have been, is or may be connected with ML/TF;
 - c) ensure that these reports are considered promptly so as to determine whether knowledge or suspicion of ML/TF is confirmed or whether a person may have been, is or may be connected with ML/TF; the AML/CFT compliance officer should also determine, document and implement a prioritisation process for the internal reports received so that internal reports concerning especially high risk situations are treated with the necessary urgency;
 - d) while assessing the reports received, record all evaluations carried out in order to determine if the suspicion is confirmed; as well as any feedback received from the FIU subsequently to improve the detection of future suspicious transactions;
 - e) ensure that knowledge or suspicion of ML/TF or of a person's connection with ML/TF are reported to the FIU as promptly as possible, submitting with the report such facts, events or information and documentation as necessary to substantiate the suspicion or instances of reasonable grounds to suspect ML/TF;
 - f) ensure a prompt and exhaustive response to any request for information made by the FIU; and
 - g) consider regularly the reasons why alerts of unusual activity or transactions were not escalated as internal reports so as to determine whether there are any issues that need to be addressed to ensure effective detection of suspicious activity or transactions.
55. The AML/CFT compliance officer should know and effectively apply any guidance provided by the FIU regarding typologies of ML/TF and indicators of ML/TF risks.



56. Financial sector operators should draw the attention of their managers and employees to the obligation to comply strictly with the prohibition to inform the customer or third parties that a ML/TF analysis is ongoing or may be started and to limit access to this information to the persons who need it for the performance of their functions. While there is a non-disclosure obligation applicable within the financial sector operator, the AML/CFT compliance officer should still consider carefully to whom information on either any reports submitted to the FIU or any request for information received from the FIU is made within the financial sector operator. The reporting procedure should be confidential and the identity of the persons involved in the preparation and forwarding of the report should be protected by privacy policy.

g. Training and awareness

57. In accordance with the financial sector operator's obligation under Article 46(1) of Directive (EU) 2015/849, the AML/CFT compliance officer should duly inform the staff about the ML/TF risks to which the financial sector operator is exposed, taking into account the broader national and international environment in which it operates, and about the reasons why it is necessary to reduce these ML/TF risks. This information may take various forms, such as company letters, intranet, meetings. The training should be designed in a way to keep staff informed of the risks, including ML/TF methods, trends and typologies, as well as of the risk-based approach implemented by the financial sector operator to reduce and manage these risks. The AML/CFT compliance officer should further contribute to promote the adoption of the right ethical approach within the financial sector operator.

58. The AML/CFT compliance officer should ensure that the internal reporting procedures adopted by the financial sector operator are brought to the attention of all staff, including the members of the management body, any temporary or seconded employees as well as officers and employees of any service provider to whom the financial sector operator has outsourced one or more functions.

59. In addition to the general education, for the purposes of Article 46(1) of Directive (EU) 2015/849, the AML/CFT compliance officer should assess the training needs within the financial sector operator and ensure that adequate, theoretical, and practical training is provided to guarantee that the persons in different business functions concerned by the ML/TF risks are effectively able to implement the AML/CFT measures in effect in the financial sector operator.

60. The AML/CFT compliance officer should oversee the preparation and implementation of an ongoing AML/CFT training program that covers all relevant staff (irrespective of their status) of the financial sector operator who are concerned by the ML/TF risks, as well as its independent agents to the extent that they perform relevant functions and, if the financial sector operator is a payment institution or an electronic money institution, its agents or distributors.

61. The AML/CFT training should be given to newly hired staff as soon as they are hired and on an ongoing risk-sensitive basis to existing staff.



62. The AML/CFT compliance officer should identify what specific training is needed according to the ML/TF risks to which the persons to whom the training is provided, may be exposed such as, but not limited to:
- a) persons working in the compliance function under the responsibility of the AML/CFT compliance officer: training should be thorough and cover all AML/CFT aspects, thus enabling the financial sector operator to comply with all its AML/CFT obligations;
 - b) persons in contact with customers or tasked with carrying out their transactions (employees, agents and distributors): training should enable them to detect unusual transactions effectively and to alert the AML/CFT compliance officer as soon as possible in accordance with internal procedures;
 - c) persons responsible for developing procedures or software or other tools applicable to activities that are, even indirectly, sensitive to ML/TF risk: this training should enable them to adequately integrate the AML/CFT issue.
63. Such training program should include appropriate training workshops or seminars taking into account the tasks performed by the persons concerned and their exposure to ML/TF risks. For this purpose, the AML/CFT compliance officer prepares and implements, in cooperation with the human resources department of the financial sector operator, an annual plan of training and education of staff. This annual plan of training and education, as well as its realization, should be documented in writing and be referred to in the activity report to the management body as per paragraph 52.
64. Relevant employees should be:
- a) made aware of the risks of ML/TF, with a focus on those to which the financial sector operator or, where applicable, the group is most exposed, the relevant legislation, and their obligations under that legislation;
 - b) made aware of the identity and responsibilities of the financial sector operator's member of management body or senior manager responsible for AML/CFT and AML/CFT compliance officer;
 - c) trained in the financial sector operator's procedures and in how to recognise and deal with potential ML/TF transactions or activity; and
 - d) given indications and information about indicators of unusual activity, trends and typologies as to how the services and products being provided by the financial sector operator may be abused for ML/TF, including, where available, case-studies.
65. The AML/CFT compliance officer should determine indicators of assessment to check the effectiveness of trainings provided.



66. Where the financial sector operator adopts a training and awareness-raising program developed abroad, e.g. by its registered office or parent company, the AML/CFT compliance officer should ensure that this program is adapted to the legal and regulatory rules applicable at national level, as well as with respect to ML/TF typologies and specific activities of the financial sector operator.
67. Where certain training activities are outsourced to a third party, the AML/CFT compliance officer should ensure (and document within the activity report) (i) that the subcontractor has the required AML/CFT knowledge to guarantee the quality of the training to be provided, (ii) that the management conditions of the outsourcing are set and respected, and (iii) that the content of this training is adapted to the specific features of the financial sector operator concerned and that the field experience of the financial sector operator's AML/CFT compliance officer is properly reflected in the training.

4.2.5 Relationship between AML/CFT compliance function and other functions

68. Where AML/CFT compliance function is different from compliance function, in addition to the provisions of ESAs Guidelines on internal governance²⁷ on transparent and documented decision-making process and clear allocation of responsibilities and authority within its internal control framework, financial sector operators should meet the provisions set out in this section.
69. The independent audit function referred to in Article 8(4)(b) of Directive (EU) 2015/849 should not be combined with the AML/CFT compliance function.
70. The independent audit function referred to in Article 8(4)(b) of Directive (EU) 2015/849 should as part of its audit of the internal policies, controls and procedures referred to in point Article 8(4)(a) of Directive (EU) 2015/849 :
- a) examine and evaluate the adequacy and effectiveness of the governance, policies, controls and procedures adopted by the financial sector operator to comply with the AML/CFT regulatory framework;
 - b) identify any weaknesses or shortcomings, and make recommendations in relation to those policies, controls and procedures and the application thereof; and
 - c) monitor the financial sector operator's compliance with those recommendations and the remedial actions.
71. The risk management function, and where established, the risk committee, should have access to relevant information and data necessary to perform their role, including information and data from relevant corporate and internal control functions, such as AML/CFT compliance.

²⁷ EBA Guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05 ;ESMA Guidelines on certain aspects of the MiFID II compliance function requirements: ESMA35-36-1946; EIOPA Guidelines on system of governance: EIOPA-BoS-14/253 EN



72. A good cooperation to exchange needed information should take place between the Head of Risk management and the AML/CFT compliance officer. The Head of Risk management should provide relevant information to the AML/CFT compliance officer. The AML/CFT compliance officer should keep informed the Head of Risk management of its reporting to the management body. The AML/CFT compliance officer should cooperate with the risk function for the purpose of setting AML/CFT methodologies coherent with the risk management strategy of the financial sector operator.

4.2.6 Outsourcing of operational functions of the AML/CFT compliance officer

73. In addition to the ESAs guidelines on outsourcing²⁸, as applicable, and where the outsourcing of the AML/CFT compliance function is permitted under national law, financial sector operators should comply with the provisions as set out in the section. The ultimate responsibility of those outsourced functions lies with the financial sector operator.

74. Strategic decisions in relation to AML/CFT should not be outsourced, in particular the following operational functions should not be outsourced (except for certain types of financial sector operators, i.e. collective investment funds, the AML/CFT compliance function is outsourced as such and not only the operation part of it since these entities have at a maximum a board or management in place and thus outsourcing will be beyond operational tasks);

- a) the validation of the business-wide ML/TF risk assessment;
- b) the internal organisation of AML/CFT system;
- c) the adoption and revision of internal AML/CFT policies and procedures;
- d) the approval of the methodology for individual risk assessment, the entry into the business relationship and the assignment of the risk profile;
- e) the establishment of criteria to detect unusual transactions;
- f) the responsibility of reporting of suspicious transactions to the FIU;
- g) accepting high-risk customers; and
- h) any other decisions which, according to their nature, should be made within financial sector operator

75. The outsourcing of tasks of the AML/CFT compliance officer function to a service provider should meet the following additional conditions:

²⁸ EBA Guidelines on outsourcing arrangements EBA/GL/2019/02; EIOPA Guidelines on outsourcing to cloud service providers EIOPA-BoS-20-002; ESMA Guidelines on outsourcing to cloud service providers ESMA50-157-2403



- a) The decision to outsource should be preceded by a documented analysis to identify the risks that would be associated with this outsourcing, including the risks related to the use of new technologies and where appropriate, the outsourcing chain, in this context, in order to define the measures to be implemented to manage and reduce these risks;
 - b) The decision to outsource should be duly justified in the light of the objectives pursued, clearly indicating whether it is taken pursuant to the principle of proportionality and/or whether it aims to ensure an optimal allocation of AML/CFT resources throughout the group to which the financial sector operator concerned belongs.
 - c) The financial sector operator which outsources tasks of the AML/CFT compliance function should entrust its AML/CFT compliance officer with:
 - i) monitoring the service provider's performance to ensure that the outsourcing effectively enables the financial sector operator to comply with all its legal and regulatory AML/CFT obligations;
 - ii) carrying out a regular control of compliance by the third-party delegate with the commitments arising from the contract. In accordance with the documented analysis, the regular control should ensure that the AML/CFT compliance function is provided with means to test and monitor regularly and occasionally compliance with the obligation's incumbent upon the third-party delegates. As regards its customer's data, the AML/CFT functions and the competent authority should have access rights to the systems/databases of the third-party delegate;
 - iii) reporting on the outsourcing to the management body via the member of management body or senior manager responsible for AML/CFT as part of the AML/CFT compliance officer's activity report or whenever circumstances require, in particular so that any necessary remediation measures are implemented as soon as possible.
 - d) In the framework of the outsourcing of tasks of the AML/CFT compliance function, the rights and obligations of the professional and service provider as well as their roles, responsibilities and duties shall be clearly listed, distributed and defined in an outsourcing contract.
76. Outsourcing within a group should be subject to the same provisions as outsourcing to an external service provider. Financial sector operators making use of intragroup outsourcing should in particular take the measures necessary to identify and manage any conflicts of interest that could arise from such an outsourcing agreement. The parent entity of the group should:
- a) establish an inventory of cases of intra-group AML/CFT outsourcing, in order to determine which function relates to which legal entity; and
 - b) ensure that intra-group outsourcing does not compromise the compliance of each subsidiary with its AML/CFT obligations.



77. The outsourcing of tasks related to AML/CFT to service providers established in third countries should be subject to additional safeguard measures in order to ensure that the outsourcing does not, as a result of the location of the service provider, increase the risk of non-compliance with the legal and regulatory requirements or of inefficient performance of the outsourced tasks, nor hinders the competent authority's capacity to effectively exercise its supervisory power with regard to the service provider.

4.3 Organisation of AML/CFT compliance function at group level

4.3.1 Integration at group level

78. The group-wide policies and procedures referred to in Article 45 of Directive (EU) 2015/849 should ensure that the parent financial sector operator has sufficient data and information and is able to assess the group-wide ML/TF risk profile, taking into account the revised EBA Guidelines on ML/TF risks²⁹.
79. The internal control framework of the financial sector operator concerned should be adapted on an individual basis to the specificity of its business, its complexity and the associated risks, taking into account the group context. The financial sector operator concerned should organise the exchange of information necessary in a manner that ensures that each management body, business line and internal unit, including each internal control function, is able to carry out its duties. This means, for example, a necessary exchange of adequate information between the business lines and the AML/CFT compliance function, and the compliance function where different, at the group level and between the heads of the internal control functions at the group level and the management body of the financial sector operator.

4.3.2 Role of the management body for AML/CFT at group level

80. The management body of the parent financial sector operator should carry out at minimum the following tasks:
- a) in order to have a cartography of the risks to which each group entity is exposed, ensure that the group entities perform their own business-wide ML/TF risk assessments in a coordinated way, yet reflecting their own specificities, taking into account Article 8(1) of Directive (EU) 2015/849 and the EBA Revised Guidelines on ML/TF Risk Factors³⁰;
 - b) when receiving a report about investigations carried out by competent authorities in host countries or deficiencies in the subsidiaries from the member of the group management body or senior manager responsible for AML/CFT or directly by the Group AML/CFT compliance officer, ensure a proper monitoring until completion of remediation measures by the subsidiary.

²⁹ EBA Revised Guidelines on ML/TF Risk Factors: EBA/GL/2021/02

³⁰ EBA Revised Guidelines on ML/TF Risk Factors: EBA/GL/2021/02



4.3.3 Organisational requirements at group level

81. When implementing group-wide policies and procedures as referred to in Article 45 of Directive (EU) 2015/849, conflicting interests, meaning ML/TF risk-generating tasks such as the commercial function, between the parent financial sector operator and a subsidiary should not jeopardize the compliance with AML/CFT requirements, and should be mitigated.
82. The parent entity should:
- a) designate a member of the group management body or senior manager responsible for AML/CFT among the senior managers directing the business at group level, a Group AML/CFT compliance officer and set up the organisational and operational coordination structure at group level with sufficient decision power for the group AML/CFT management to make this position effective at managing and mainly preventing ML/TF risks, according to proportionality principle and applicable domestic legislation;
 - b) validate the group's internal AML/CFT procedures and ensure that these are consistent with the group's structure and with the size and characteristics of the financial sector operator belonging to it;
 - c) set up internal AML/CFT control mechanisms at group level;
 - d) regularly evaluate the effectiveness of the AML/CFT policy at group level; and
 - e) for financial sector operator that operates branches or subsidiaries in another member state or a third country, appoint a Group AML/CFT compliance officer as a coordinator, for ensuring the implementation by all the companies of the group, which are engaged in financial activities, of the group policy and the adequate and appropriate systems and procedures for the effective prevention of ML/TF. Hence, the Group AML/CFT compliance officer should monitor on a continuous basis the compliance with the obligations through on-site and off-site controls. This coordination and steering at group level should not affect the legal capacity of subsidiaries and branches to meet their legal and regulatory obligations applicable at local level, such as answering requests from the domestic competent authority and FIU, and the capacity of the management bodies of these entities to manage their local AML/CFT policy.
83. The Group AML/CFT compliance officer should cooperate fully with the AML/CFT compliance officer of each entity.
84. The Group AML/CFT compliance officer's tasks should have at least the following tasks:
- a) coordinate the drafting, in accordance with the principles defined at group level, and the effective implementation by each entity of the group of internal procedures for the business-wide assessment of the ML/TF risks to which it is exposed;
 - b) organise the aggregation of the results of risk assessments carried out at local level in order to have a good knowledge and understanding of the nature, intensity and location of the ML/TF



risks to which the group as a whole is exposed and draft a group-wide ML/TF risk assessment. In this respect, the parent entity of the group should take into account, in its ML/TF risk management system at group level, both the individual risks of the various entities of the group and their possible interrelations that could have a significant impact on group-wide risk exposure. In this respect, particular attention should be paid to the risks to which the group's branches or subsidiaries established in non-equivalent third countries or third countries presenting a high ML/TF risk are exposed;

- c) taking into account the knowledge of the ML/TF risks to which the group is exposed, coordinate the definition of the AML/CFT policies and procedures of the different entities of the group with a view to ensuring consistency and a high level of effectiveness of prevention measures throughout the group. In this respect, the Group AML/CFT compliance officer should ensure that local policies and procedures not only guarantee compliance with the AML/CFT legislations and regulations applicable to each entity of the group individually, but also aim, more broadly, to identify, control and reduce local ML/TF risks in a manner consistent with the principles applicable in this respect throughout the group;
- d) coordinate the activities of the various local AML/CFT compliance officers in the group's operational entities in order to ensure that they work consistently;
- e) monitor compliance of the branches and the subsidiaries located in third countries with EU AML/CFT provisions, where requirements for the prevention of ML/TF are less strict than those set out in Directive (EU) 2015/849;
- f) set group-wide policies, procedures and measures concerning, in particular, STRs procedures, data protection and sharing of information within the group for the purposes of AML/CFT in accordance with the national legal provisions;
- g) ensure that the entities of the group have adequate STRs procedures and share information properly, including the information that a suspicious transaction report has been filed (with no prejudice to national confidentiality rules where existing).

85. The Group AML/CFT compliance officer should have in its activity report to the group management body, in addition to the points mentioned in paragraph 52, at least the following points from the AML/CFT compliance officers in branches and subsidiaries:

- a) Statistics consolidated at group-level, especially on risk exposure and suspicious activities broken down by business lines, geographies and distribution channels;
- b) Sectoral trends of ML/TF risks across subsidiaries and branches, possibly based on the National Risk Assessment and other sources of information;
- c) Monitoring of risks, that have occurred in one subsidiary or branch, across other subsidiaries and branches, in a timely fashion before crystallization;



- d) Impact analysis on AML/CFT compliance for the group of certain risks if not mitigated at subsidiary or branch level;
 - e) Examinations of subsidiaries or branches of the financial sector operator including the number of examinations and the serious defects and weaknesses identified in the AML/CFT policy and procedures of the financial sector operator, the seriousness of failures or weaknesses, the risks entailed and the actions or recommendations for corrective measures; and
 - f) Information on steering and oversight of subsidiaries and branches with a special focus on the ones located in high risk countries if applicable.
86. The AML/CFT compliance officer of a subsidiary or branch should have a direct reporting line for communication with the Group AML/CFT compliance officer.
87. The group should ensure that all procedures and policies are aligned. As per proportionality principle, a committee structure can be put in place between subsidiaries or branches and the group.

4.4 Review of AML/CFT compliance function by competent authorities

88. Under the risk-based approach in line with EBA revised Risk-based supervision Guidelines³¹, the competent authority should investigate the measures a financial sector operator has taken to ensure, as part of the assessment of the risk of non-compliance of financial sector operators in line with Article 48(7) of Directive (EU) 2015/849, that the AML/CFT compliance officer meets the conditions relating to integrity, expertise and knowledge of the legal and regulatory AML/CFT framework, either at appointment or at a later stage.
89. The competent authority should take the following measures on a risk-based approach:
- a) Request a summary of the AML/CFT compliance officer's professional expertise by the financial sector operator appointing the AML/CFT compliance officer. This should list as a minimum any previous positions held in financial sector operators, the name of those financial sector operators, and the details of the home competent authority of these financial sector operators; and
 - b) On a risk-sensitive basis, request the financial sector operator to share the outcome of the assessment of the AML/CFT compliance officer's suitability carried out by the management body.
90. If the competent authority considers that the individual acting as AML/CFT compliance officer is not suitable, the competent authority should notify the financial sector operator and should take any steps it considers necessary without undue delay, ranging from requiring additional

³¹ EBA revised Risk-based supervision Guidelines (add reference once published)



training to replacement of the individual through an internal reorganization.

91. The competent authority should inform the prudential supervisor of its findings in this regard, together with any recommendations on the matter on whether the said individual should be replaced, or some other condition imposed on that individual, where this individual is a key function holder.

1. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

A. Introduction

1. In several provisions of the Directive (EU) 2015/849 there are references to the existence of senior management in charge of AML/CFT compliance function that is required to approve business relationships or transactions involving high-risk third countries (Article 18a(1)(e) of Directive (EU) 2015/849), cross-border relationships with a third-country respondent institution (Article 19(c) of Directive (EU) 2015/849) and transactions or business relationships with politically exposed persons (Article 20(b)(i) of Directive (EU) 2015/849), among others. Moreover, senior management should approve policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing (Article 8(5) of Directive (EU) 2015/849).
2. More specifically, Article 8(4a) of Directive (EU) 2015/849 makes reference to the appointment of a compliance officer at management level if appropriate and Article 46(4) of Directive (EU) 2015/849 requires entities to identify the member of the management body who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Level 1 text.
3. In 2017 and 2019, the European Commission issued Reports on the assessment of the risks of ML/TF affecting the internal market and relating to cross-border activities³² ('Supra National Risk Assessment') where it recommended that the European Supervisory Authorities (ESAs) provide guidelines to clarify the functions of compliance officers in financial institutions.³³

B. Policy objectives

4. The guidelines aim at ensuring that the provisions of Level 1 text are interpreted and applied consistently and effectively. To this end, the guidelines describe the responsibilities at all hierarchical levels of the AML/CFT compliance function. First, the roles and responsibilities of the management body in the AML/CFT framework. Second, the role of AML/CFT compliance officer is described at all phases (i.e. the expectations about the appointment, the tasks and the reporting to the management body).

³² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0340>

³³ https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf



5. The guidelines also address the organisation of AML/CFT compliance function at group level and the relationship and interactions between AML/CFT compliance function and other functions related to the three lines of defence.

C. Baseline scenario

6. The current EU legislative framework for credit institutions' internal governance consists mainly of Directive 2013/36/EU, the EBA guidelines on internal governance under Directive 2013/36/EU issued in 2017, the EBA draft guidelines on internal governance under Directive 2013/36/EU issued in 2020, the EBA guidelines on the assessment of the suitability of members of the management body and key function holders and the EBA guidelines on outsourcing. The draft amended guidelines on internal governance under Directive 2013/36/EU include in the section dedicated for the compliance function by stating that credit institutions should take appropriate action against internal or external behaviour that could facilitate or enable fraud, ML/TF or other financial crime and breaches of discipline.
7. The impact assessment covers the application of the provisions included in the Level 1 text about the existence of the AML/CFT compliance officer and approval processes of senior management and the policy options assessed during the drafting process for implementing the recommendations of the Supra National Risk Assessment reports of 2017 and 2019.

D. Options considered

8. In the process of drafting the guidelines, the ESAs consider whether to tackle the recommendation by updating EBA guidelines on internal governance or by issuing a new set of guidelines (approach for fulfilling the mandate). Other aspects, mainly related to the scope of the guidelines and the proportionality provisions, were discussed.

Approach for fulfilling the mandate

Option 1: Update guidelines on internal governance under Directive 2013/36/EU

9. The EBA guidelines on internal governance under Directive 2013/36/EU apply to credit institutions and investment firms as defined in point 3 of Article 4(1) of Regulation (EU) No 575/2013 ('CRR I'). Similarly, the guidelines are addressed to prudential supervisors, as defined in point 40 of Article 4(1) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876.
10. This option is aligned with CRR I but the scope of application of the Directive (EU) 2015/849 is larger and would not be effective to address both the mandate and the effective compliance with the Directive (EU) 2015/849 provisions.



Option 2: Draft new set of guidelines

11. Under this option, the scope of application is larger, as it will ensure the applicability of the guidelines not only for credit institutions and investment firms, but also to financial sector operators as defined in Article 4(1a) of Regulation (EU) No 1093/2010, which are credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849. Moreover, the guidelines are also applicable to competent authorities as defined in Article 4(2) (iii) of Regulation (EU) No 1093/2010..
12. This option is more aligned with the recommendation from the Commission specified in the Supra National Risk Assessment reports of 2017 and 2019, which applies to financial institutions and not only to credit institutions.
13. Option 2 is the preferred option.

Scope of the guidelines

Option 1: Provide guidelines on all aspects of the AML/CFT compliance function

14. Under this option, guidelines will be provided in relation of all aspects of the AML/CFT compliance function, including role of the management body and member of the management body or senior manager responsible for AML/CFT, as well as the organisation of the AML/CFT compliance function at group level. This option might appear to be more efficient for the addressees, as all the guidelines related to the AML/CFT compliance function would be accessible in a single document. Moreover, one single document ensure that financial sector operators comply with the Level 1 text, address the shortcomings identified in the Joint Opinion on ML/TF risks affecting the EU financial sector and fulfil the Commission' s recommendation included in the Supra National Risk Assessment reports. Thus, it provides additional clarity to financial sector operators while maintaining the costs of implementation constant, as the costs of implementing a single set of guidelines and separate sets of guidelines would be the same.

Option 2: Provide guidelines only on the role of the AML/CFT compliance officer

15. This option would focus only on the aspects related to the AML/CFT compliance officer, without considering the role of the management body and the member of the management body or senior manager responsible for AML/CFT. This option is sufficient to address the recommendation of the Supra National Risk Assessment Reports of 2017 and 2019. However, the EBA's guidelines should also achieve a consistent application of relevant provisions in the Level 1 text, which include several references to approval processes from senior management in charge of AML/CFT. Moreover, the 2017 Joint Opinion of the three ESAs pointed out that the most common breaches related to inadequate controls were those about the identification and verification of financial sector operators' customers,



weaknesses in the internal controls and overall AML/CFT policies and procedures and customer risk assessments.

16. Thus, Option 2 would be more focused in addressing the Commission recommendation to draft guidelines on the functions of AML/CFT compliance officers, but it would be insufficient to strengthen financial sector operators' compliance with the Level 1 text and tackling the shortcomings identified in the Joint Opinion.

17. Option 1 is the preferred option.

Proportionality

Option 1: Neutral approach

18. Under this option, guidelines regarding the AML/CFT compliance function in financial sector operators would be drafted in general terms, without considering specific situations of those financial sector operators with limited ML/TF risk or less complex business relationship and transactions.

Option 2: Provision of sufficient guidance, in line with the Directive (EU) 2015/849, for the application of proportionality principle

19. This option would include sufficient guidance to ensure that the guidelines are implemented in a proportionate manner, commensurate to the level of ML/TF risk, the size or the business model of the financial sector operator. Thus, Guideline 1 includes the first proportionality provision by prescribing the appointment of a senior manager responsible for AML/CFT where no management body is in place. Guideline 1 ensures as well that the AML/CFT policies, procedures and internal control measures are adequate and proportionate to the characteristics and the ML/TF risks. The proportionality is present in the Article 8(4a) of Directive (EU) 2015/849 by envisaging, with regard to the size and nature of the business, the appointment of a separate AML/CFT compliance officer at management level. Therefore, in compliance with Level 1 text, Guideline 2 exempts financial sector operators from the appointment of a separate AML/CFT compliance officer when the ML/TF risk is limited. However, the choice of the financial sector operators of not appointing a separate AML/CFT compliance officer does not exempt from complying with AML/CFT obligations. Thus, the financial sector operators should allocate the related tasks to the senior manager already responsible of AML/CFT or by outsourcing certain tasks.

20. This option will ensure full alignment with the Level 1 text and to other guidelines to which this guidelines are referenced, such as the EBA guidelines on internal governance, which apply the proportionality principle in line with Article 74(2) of Directive 2013/36/EU.

21. Option 2 is the preferred option.



F. Cost-benefit analysis

22. The implementation of the guidelines entails costs and benefits for both financial sector operators and competent authorities.
23. Regarding financial sector operators, the benefits of additional guidance on the AML/CFT compliance function will increase their robustness and reduce their vulnerability towards ML/TF risks, both as a group and on an individual level because, similarly to EBA guidelines on internal governance, the guidelines are applicable to both the parent entity and the subsidiaries. Thus, the parent entity can assess group-wide risk profile. Moreover, the guidelines strengthen the level playing field, as the guidelines are not applicable only to credit institutions but also to other types of financial sector operators, as defined in Article 4(1a) of Regulation (EU) No 1093/2010. Financial sector operators will also benefit from the certainty introduced by the guidelines about the hierarchical structure of the AML/CFT compliance function, the responsibility for the appointment of the AML/CFT compliance officer, the tasks and the subsequent reporting by the AML/CFT compliance officer to the management body, the content of the activity report that should be prepared by the AML/CFT compliance officer, the responsibility about customer acceptance policies and the reporting to the FIU of suspicious transactions, among others. In sum, the guidelines would strengthen internal governance in relation to AML/CFT requirements and mitigate the level of ML/TF risk faced by the financial sector operators.
24. In relation to the costs faced by financial sector operators, the one-off costs are limited as financial sector operators already had to be compliant with the provisions included in Directive (EU) 2015/849 related to the existence of senior management in charge of AML/CFT issues and the obligation to have policies, controls and procedures to mitigate and manage effectively the risks of ML/TF (Article 8 of Directive (EU) 2015/849), among others. Instead, one-off costs are related to the distribution of duties between the management body, the management body or senior manager responsible for ML/TF issues and the AML/CFT compliance officer. Other one-off costs are the provision of adequate human and material resources to the AML/CFT compliance officer in order to execute the duties effectively and the preparation of AML/CFT training if necessary. The costs faced by financial sector operators are proportionate to their size, business activities, complexity of transactions and level of ML/TF risk, as some financial sector operators are exempted from the appointment of a separate AML/CFT compliance officer if it is not deemed necessary. If that is the case, they should distribute the functions among already existing roles related to AML/CFT compliance within the financial sector operator.
25. Regarding competent authorities, the benefits are related to the implementation in the EU of a harmonised hierarchical structure of the AML/CFT compliance function, particularly beneficial when performing supervisory duties. Thus, competent authorities will account with greater clarity about the tasks, responsibilities of the preparation of the policies and procedures and reporting processes (the AML/CFT compliance officer should report to the



management body via the member of the management body). Moreover, the guidelines envisage the preparation of an activity report by the AML/CFT compliance officer that can serve the competent authority in the assessment the actions taken by the financial sector operators during the exercise. The one-off costs faced by competent authorities are expected to come from the review of the implementation of the guidelines in the first supervisory year of application while the subsequent costs are expected to come from the review of the activity report of the AML/CFT compliance officer and ensure that contains all the sections required by the guidelines.



5.2 Overview of questions for consultation

1. **Do you have any comments on the section ‘Subject matter, scope and definitions’?**
2. **Do you have any comments on Guideline 4.1 ‘Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT’?**
3. **Do you have any comments on Guideline 4.2 ‘Role and responsibilities of the AML/CFT compliance officer’?**
4. **Do you have any comments on Guideline 4.3 ‘Organisation of the AML/CFT compliance function at group level’?**
5. **Do you have any comments on Guideline 4.4 ‘Review of the AML/CFT compliance function by competent authorities’?**