

# EBA Consultation Paper: amending the AML Risk-Based Supervision Guidelines to include crypto-asset service providers

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## Introduction

This [consultation](#) seeks feedback on proposed amendments to the scope of the existing Guidelines on Risk-based Supervision in relation to anti-money laundering (AML), such that they cover 'crypto-asset service providers' in the light of the co-legislators' [provisional agreement](#) on the Wire Transfer Regulations which have been expanded to include cryptoasset transfers.

EBA intends the revised guidelines consulted on to fulfil the mandate under Article 30(3) of the provisional agreement, and to:

- emphasise the importance of cooperation among competent authorities, other stakeholders and prudential supervisors;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions;
- provide guidance on the sources of information available to competent authorities when supervising crypto-asset service providers;
- set out how competent authorities should determine the type of guidance needed within the sector and how to communicate this guidance in the most effective manner; and
- stress the importance of training to ensure that staff from competent authorities are well trained and have the technical skills and expertise necessary for the execution of their functions, including the supervision of crypto-assets service providers.

## General comments

We welcome the early consultation by EBA to prepare for the inclusion of cryptoasset transfers in the scope of its AML-related guidelines. We also welcome EBA's recognition that some additional, tailored

guidance is likely to be helpful to ensure that guidelines can be effectively applied to cryptoasset transfers.

We recognize that many of EBA's proposed amendments are technical in nature, serving mainly to reference the new legislation, mandate and scope. We have not commented on these.

We welcome the inclusion of references to the need for supervisors to consider and understand technologies that are key to the delivery of cryptoasset services and which may be useful in AML controls. Such understanding is important to ensure that risks are understood, that the quality of firms' controls can be appropriately understood, and to ensure that efficient and effective use is made of opportunities to deploy technology in AML controls and supervision which may be different from those used for 'traditional' transaction monitoring.

We think it would be helpful to go further and include references to the need to understand and consider how choices about technology can affect the AML risk profile of cryptoasset services. For example, there may be differences arising from whether CASPs are centralized or decentralized in nature, whether crypto-asset wallets are open-source or proprietary, whether the ledger is permissioned or permissionless, the degree of anonymity permitted, and the extent to which anonymity is actively facilitated, for example through the use of [mixers](#) or embedded anonymization technologies within the crypto-asset itself. We have suggested ways to include this.

We also welcome the emphasis on the importance of co-ordination between competent authorities, and consistency of approach which is beneficial both for the achievement of the authorities' objectives and for regulated entities.

## 1. Do you have any comments with the proposed changes to the 'Subject matter, scope and definitions'?

The BSG is supportive of the European Parliament's and Council's readiness to make CASPs eligible for AMLA's direct supervision, and we encourage the decision-makers in the trilogue negotiations to extend the list of obliged entities accordingly.

If CASPs are at the same time Financial Institutions, they will in any case be AML-supervised by the Financial Supervisory Authorities in their respective member state at least, possibly also by the AMLA if they are significant and meet the criteria for AMLA supervision. Against this backdrop it is particularly important to also include CASPs that are not Financial Institutions under AMLA supervision, in order to ensure a level playing field in the EU single market for financial services.

## 2. Do you have any comments with the proposed changes to the Guideline 4.1 'Implementing the RBS model'?

We are content with the proposed amendments.

### 3. Do you have any comments on the proposed changes to the Guideline 4.2 ‘Step 1 – Identification of risk and mitigating factors’?

#### Amendment to para 41: information to identify risk factors – new (l)

This addition is welcome but as drafted is currently too high-level to provide assurance that the implications of the technology for ML/TF risks will be identified and understood. We think it is important to indicate that there are choices about how technology is used which impact the business model and the ML/TF risk. One approach would be to incorporate specific examples – such as the choice between permissioned and permissionless ledgers or the use of mixers to disguise the origin of coins in a transaction. However, we have proposed a drafting in more general terms to allow for evolution of the technology. We therefore suggest adding to new paragraph 41 letter l as follows:

‘l) the (infrastructure) technology prevalent in the sector, in particular where this is essential to the sector’s business model and operation (such as Distributed Ledger Technology (DLT)) **and where choices about how such technology is deployed affect the susceptibility of the business to use for ML/TF purposes (such as technology which facilitates anonymity or masks the origin of funds).**’

#### Amendment to para 45(a): information to identify risk factors - new point (v)

We welcome the recognition that there are different tools available for the monitoring/analysis of transactions using DLT and that this is a factor competent authorities need to consider.

#### Other proposed amendments

We are content with the other proposed amendments.

### 4. Do you have any comments on the proposed changes to the Guideline 4.3 ‘Step 2 – Risk assessment’?

#### Amendment to para 59(a): individual risk assessments

We are content with the proposed amendment.

### 5. Do you have any comments with the proposed changes to the Guideline 4.4 ‘Step 3 – Supervision’?

#### Amendment to para 78(e): Supervisory strategy

We welcome the recognition that competent authorities will need to consider what technology they themselves need: that will be essential to ensure that their supervision is both effective and efficient given the specific tools available where (for example) DLTs are used.

We propose one small addition to the drafting to reflect the fact that competent authority staff need to understand the relevant technology and how to use the tools too. Competent authorities need to

avoid behaviour that they would criticize in a supervised firm, such as buying an off-the-shelf IT tool without configuring and using it appropriately or being able to sensibly interpret what it is telling them:

‘e) determine the supervisory resources necessary to implement the supervisory strategy and ensure that sufficient resources are available to them. When determining the necessary resources, competent authorities should also consider the technological resources they need to perform their functions effectively, in particular where technology is essential to how the specific sectors operate, **and the need for staff to have sufficient understanding of technologies and tools to deploy them appropriately;**’

We consider that it is appropriate to include this addition here and not only in paragraphs 132-136 which deal with staff training, as those paragraphs focus more on equipping staff to understand and use the supervisory strategy and tools, rather than the expertise needed to design the framework and tools in practice, which is also relevant here.

#### **Amendment to paragraphs 133, 133A, 134(c) and (d), 135, 135A: Staff training**

We welcome the addition of a reference to the need for appropriate ‘technical expertise’ in paragraph 133. Taken together the revised version of this section could be understood as including a sufficient understanding of technology where key to business models, the assessment of risks, and deployment of supervisory tools, but there is scope for ambiguity. We think it would be preferable to include an explicit reference given the unavoidable need for such expertise in relation to the supervision of CASPs in particular.

The explicit reference could be included in various different parts of this section. We suggest adding it into paragraph 133 as follows:

‘133. Competent authorities should develop a training programme, which should be adjusted to meet the needs of specific functions within the competent authority, taking into account the characteristics of the sectors under their supervision, their job responsibilities, seniority and experience of staff. Competent authorities should ensure that relevant staff has sufficient technical expertise for the supervision of the subjects of assessment, **including appropriate technological expertise where intrinsic to the business model, operations or controls of the entities supervised.** This training program should be kept up to date and reviewed regularly. Competent authorities should monitor the level of training completed by individual staff members or entire teams as appropriate.’

And adding a new point g) at the end of paragraph 134 as follows:

**‘g) understand the technology underpinning business models, operations or controls of supervised entities or supervisory tools sufficiently to assess the risks and controls of supervised entities and to enable the appropriate deployment of technology-enabled supervisory tools.’**

#### **Other proposed amendments**

We are content with the other proposed amendments.

6. Do you have any comments on the proposed changes to the Guideline 4.5 'Step 4 – Monitoring and updating of the RBS model'?

**Amendment to paragraph 148(a)**

We are content with the proposed amendment.