JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Preliminary report on anti-money laundering and counter financing of terrorism Risk Based Supervision

- The Joint Committee is a forum for cooperation that was established on 1st January 2011, with the goal of strengthening cooperation between the European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority, collectively known as the three European Supervisory Authorities. Through the Joint Committee, the three European Supervisory Authorities cooperate regularly and closely and ensure consistency in their practices. One of the areas the Joint Committee works in is regarding measures combating money laundering.

- This document has been prepared by one of the Sub-Committees of the Joint Committee, the Anti-Money Laundering Sub-Committee (AMLC).

- It is designed to help supervisors of financial institutions across the European Union (EU) adopt an effective risk based approach to anti-money laundering and counter financing of terrorism (AML/CFT) supervision.

- A proposal for a new Money Laundering Directive is currently under negotiation at EU level to bring EU legislation in line with the revised Financial Action Task Force (FATF) Standards. The proposal foresees tasks for the European Supervisory Authorities, including the drafting of guidelines on the AML/CFT risk based supervision. This document does not prejudge the discussions or contents of the new Money Laundering Directive.

- This document is not binding on competent authorities.

- It provides information on the key components that will form part of most supervisors' Risk Based Supervision (RBS) as well as self-assessment questions for supervisory authorities to consider when establishing/reviewing their RBS to allow them to implement/revise and improve it where necessary.

- The key components and questions are not intended to be used by supervisors as a tick box list. Each supervisory authority will need to think carefully about their own legal and regulatory systems, financial sector and money laundering and terrorist financing risks and tailor their RBS with these in mind.

- This document is focused purely on how supervisory authorities can use a risk based approach in supervising financial institutions for AML/CFT purposes. It does not cover how those financial institutions implement their own AML/CFT risk based approach or how supervisory authorities oversee that risk based approach.

Table of Contents

List of abbreviations

AMLC: Anti Money Laundering Committee
AML/CFT: Anti-money laundering and counter financing of terrorism
DNFBPs: Designated non-financial businesses and professions
EBA: European Banking Authority
EIOPA: European Insurance and Occupational Pensions Authority
ESMA: European Securities and Markets Authority
EU: European Union
FATF: Financial Action Task Force
JC: Joint Committee of the European Supervisory Authorities, which are the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA)
ML/TF: Money Laundering/Terrorist Financing
MVTS: Money or value transfer services
RBA: Risk-Based Approach
RBS: Risk Based Supervision
SRB: Self-regulatory body

1. Introduction – Background

Many European supervisors have used a risk based approach to AML/CFT supervision for some time.

The new Interpretative Note to the new FATF Recommendation 26 (INR26 - see annex 1) asserts explicitly for the first time that adopting a risk based approach to AML/CFT supervision (RBS) allows supervisory authorities to use their resources and to exercise their responsibilities more effectively than in a more rules-based approach. It also sets out conditions for the effective implementation of both aspects of a risk based approach to AML/CFT supervision; for the allocation of AML/CFT supervisory resources by competent authorities according to the risks and for the supervision of the AML/CFT risk based approach as applied by financial institutions themselves.

This risk based supervision covers the supervision of financial institutions' compliance with both their AML and CFT obligations. Moreover, FATF Recommendation 18 has introduced a requirement for groups to define and implement AML/CFT consolidated policies and procedures.

The FATF requires that AML/CFT measures and systems be in place and effective. The FATF's Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems approved in February 2013 not only considers the extent to which supervisors have the necessary powers and resources, but specifically includes in the effectiveness assessment an "immediate outcome number 3" which requires that: "*Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.*" (See annex 2)

The proposal for the 4th AML/CFT Directive was published in February 2013 and is still subject to negotiations. Whilst not yet adopted, the proposal contains a set of conditions which supervisory authorities have to meet when applying an RBS in line with FATF Standards. Indeed draft Article 45 (6) and (7) of the draft 4th Directive states the following:

> *"Article 45: ... (6) Member States shall ensure that competent authorities that apply a risk-sensitive approach to supervision:*
>
> *(a) have a clear understanding of the money laundering and terrorist financing risks present in their country;*
>
> *(b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and*
>
> *(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.*

(7) The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in the management and operations of the obliged entity."

Consequently, each national AML/CFT supervisor for the financial sector that applies a RBS will need to ensure that its AML/CFT supervisory model is compliant with the new European requirements. They will also be required to ensure that their supervisory model is effectively and consistently applied in practice.

This document aims at helping national supervisory authorities when designing or, if necessary, revising and enhancing their own RBS model. It draws lessons from presentations made by 7 national authorities during an AMLC workshop on 28th September 2012 concerning elements of their "AML/CFT Risk Based Supervision" model or ideas on the issue. The following four sections contain questions that supervisory authorities could ask themselves when considering how their RBS works and could thus help them to identify strengths of their RBS models and aspects that could be improved to bring them in line with the new FATF and European requirements.

The RBS model chosen by each authority should take into account all the circumstances relating to the different types of financial institutions and financial activities in their country, and to the specific institutional aspects of the AML/CFT supervision (including the fact that the AML/CFT supervision is exercised or not by the prudential supervisory authority). This report is non-binding. The questions within the following sections of the document may not be relevant to all supervisory authorities. They should thus be used only as a guide.

This document is focused purely on how supervisory authorities can use a risk based approach in supervising financial institutions for AML/CFT purpose. It does not cover how those financial institutions implement their own risk based approach or how supervisory authorities oversee that risk based approach.

2. Definitions

For the purpose of this document, the terminology used is consistent with the following definitions of key concepts provided for in section 1.3 of the FATF Guidance on National ML/TF Risk Assessment [1] :

- *"**Risk** can be seen as a function of three factors: threat, vulnerability and consequence. An ML/TF risk assessment is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand ML/TF risks and serves as a first step in addressing them. Ideally, a risk assessment, involves making judgments about threats, vulnerabilities and consequences, which are discussed below.*

- *A **threat** is a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities. Threat is described above as one of the factors related to risk, and typically it serves as an essential starting point in developing an understanding of ML/TF risk. For this reason, having an understanding of the environment in which predicate offences are committed and the proceeds of crime are generated to identify their nature (and if possible the size or volume) is important in order to carry out an ML/TF risk assessment. (…)*

- *The concept of **vulnerabilities** as used in risk assessment comprises those things that can be exploited by the threat or that may support or facilitate its activities. In the ML/TF risk assessment context, looking at vulnerabilities as distinct from threat means focusing on, for example, the factors that represent weaknesses in AML/CFT systems or controls or certain features of a country. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML or TF purposes.*

- ***Consequence** refers to the impact or harm that ML or TF may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally. The consequences of ML or TF may be short or long term in nature and also relate to populations, specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector. As stated above, ideally a risk assessment involves making judgments about threats, vulnerabilities and consequences. Given the challenges in determining or estimating the consequences of ML and TF it is accepted that incorporating consequence into risk assessments may not involve particularly sophisticated approaches, and that countries may instead opt to focus primarily on achieving a comprehensive understanding of their threats and vulnerabilities. The key is that the risk assessment adopts an approach that attempts to distinguish the extent of different risks to assist with prioritising mitigation efforts."*

For the purpose of this document, the following terms will be used:

---

[1] FATF Guidance - National Money Laundering and Terrorist Financing Risk Assessment, February 2013; p. 7

- *"<u>**Macro-information**</u>" means information at a national level or at the level of a sector or subsector of the financial industry.*

- *"<u>**Micro-information**</u>" means information concerning a particular financial institution.*

- *"<u>**Risk identification**</u>" means the process of finding and listing potential risks. It does not involve an assessment.*

- *"<u>**Risk assessment**</u>" means understanding the impact the risks identified would have if they occurred and the probability, or likelihood, of these risks occurring*

3. **Steps to be taken when implementing an RBS model:**

STEP 1 – COLLECTION OF INFORMATION IN ORDER TO IDENTIFY ML/TF RISKS

Supervisors gather information sufficient to enable them to identify ML/TF risks to which their financial institutions and their jurisdiction's financial market in general, are exposed.

Supervisors should gather information regularly to ensure new and emerging risks are identified

---

Key Components

- Information on the ML/TF risk their country is exposed to (this could be gathered from a national risk assessment).

- Information on the ML/TF risks their sectors are exposed to (this could be informed by, but not restricted to, international publications, such as those produced by FATF).

- Information about the ML/TF risks individual financial institutions and groups are exposed to.

Information gathered should be sufficient to identify risk; this implies that some is always needed.

Possible questions for supervisors

Has your authority developed adequate information sharing channels with other competent authorities and law enforcement agencies?

A. Macro-information

- Does your authority have access to the results of the National ML/TF Risk Assessment?

- Does your authority have access to information on risks identified at supranational level or in another country, where appropriate?

- How do you access any other relevant information about ML/TF risks in your country? Are there any relevant sources which you don't have access to?

- How do you keep this information up to date?

B. Micro-information

- Does your authority make use of relevant information obtained in the context of its other prudential or other conduct responsibilities to inform the individual ML/TF risk assessments of that financial institution or group?

- Has your authority developed any specific tools to collect information needed for individual ML/TF risk identification, including information on the threats inherent to/resulting from the institution's business model [1] and on information about the vulnerability which depends on the level of compliance with AML/CFT requirements [2]?

[1] this could include information on, the scope of business, the types of products or services offered the types of customers, the geographical area serviced, the distribution channels and geographical location.

[2] this information could include the level of the AML/CFT awareness and preventive culture, the quality of the AML/CFT organization, including the level of allocated resources (human and/or technical) and the quality of the overall internal control, the quality of the assessment of risks by the financial institution, the adequacy and effectiveness of mitigation measures provided by its AML/CFT internal processes and procedures, and, in case of financial groups, the quality and effectiveness of the group's AML/CFT programs.

STEP 2 - RISK IDENTIFICATION AND ASSESSMENT

Supervisors should develop an understanding of the ML/TF risks based on information collected according to step 1 to which the sectors and financial institutions/groups they supervise are exposed. This understanding should be based on an analysis of the best information available from internal and external sources and allow supervisors to assess the extent to which ML/TF risks are likely to occur and if they occur, what impact they may have.

Key Components

A methodology to assess information gathered in Step 1 to help supervisors understand the likelihood and impact of these risks occurring.

The risk assessment should be

- a continuous and methodological process rather than a one-off exercise; it should be reviewed periodically and updated whenever relevant new information is identified;

- based on all relevant information available to the supervisor; it should consider:

  - international [1] risks, national risks and sector or subsector specific risks and financial institution/group risks;
  - the likelihood and impact of these risks;
  - the risk of one firm relative to others operating in the same sector.

Possible questions for supervisors

- How do you assess risks?

- Does the macro- and micro-information your authority has collected allow your authority to understand the ML/TF risks of their firm population and of each individual financial institution or group?

- Once the assessment is completed how are the results presented?

- Is the risk assessment kept updated? Are there key drivers that lead to an update?

- Who reviews or challenges the individual risk assessments?

[1] meaning both cross-border and supranational

STEP 3 - ACTING UPON THE ML/TF RISK ASSESSMENT TO MITIGATE RISK

The ML/TF risk assessment should inform the allocation of supervisory resource with a view to ensuring the effectiveness of supervisory actions

Key Components

Supervisors use the outputs of the risk assessment (step 2):

- to determine the type and level of resources that are needed to ensure effective AML/CFT supervision;
- to determine focus, depth and frequency of supervisory actions to sectors or individual financial institutions/groups;
- to allocate available resources accordingly.

The risk assessment should also be used to determine the adequacy of the regulatory rules and guidance.

Supervisors should consider, within legal constraints, the value of sharing the results of the risk assessment, in some form, with competent authorities and financial institutions.

Questions for supervisors

A. Impacts of the ML/TF risk assessment on supervision :

- How does the ML/TF risk assessment impact the overall (prudential) risk assessment by your authority and its supervisory plan?
- Does your authority have a range of supervisory tools that it can use depending on the risk?
- Do you have a specific AML/CFT supervisory plan? How does this reflect the AML/CFT risk assessment?
- How do you respond where unexpected risks are identified?
- Do you take supervisory action on a sector level as well as on a financial institution/group level?

B. Sharing risk information with financial institutions

- Does your authority share information about their understanding of risks at a sector or financial institution/group level with financial institutions?

C. Impacts of ML/TF risk assessment on regulation/guidance

- How does your risk assessment contribute to the domestic or international legal frameworks, and guidance?

D. Sharing risk information with other stakeholders

- Has your authority defined procedures, within legal constraints, to contribute to the National ML/TF Risk Assessment?
- Has your authority undertaken steps, when necessary and within legal constraints, to inform other competent authorities (domestically and abroad) with key outcomes of the risk assessment?

STEP 4 - MONITORING AND FOLLOW-UP ACTIONS

To maintain an effective RBS, supervisors should monitor the impact and effectiveness of their approach and make improvements where needed.

Key Components

Supervisors should regularly assess the effectiveness of their risk based approach to AML/CFT supervision.

They should regularly update, when needed, their RBS model in accordance with changes within the financial sector/system or due to other circumstances.

The assessment will identify and rectify conceptual gaps of the AML/CFT RBS model.

Questions for supervisors

- How does your authority assess the effectiveness and relevance of your information collection (as described in step 1), your risk assessment (conducted according to step 2) and mitigation strategy (determined under step 3)?

- How do you keep yourself up to date with international best practices in AML/CFT RBS?

- Is the senior management of your authority regularly informed on the AML/CFT supervisory actions and their outcome?

- Is your authority subject of external reviews on the applied AML/CFT RBS model?

4. Annexes

INTERNATIONAL STANDARDS
ON COMBATING MONEY LAUNDERING
AND THE FINANCING OF TERRORISM & PROLIFERATION

THE FATF RECOMMENDATIONS

REGULATION AND SUPERVISION

26. Regulation and supervision of financial institutions

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution. Countries should not approve the establishment, or continued operation, of shell banks.

For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes, and which are also relevant to money laundering and terrorist financing, should apply in a similar manner for AML/CFT purposes. This should include applying consolidated group supervision for AML/CFT purposes.

Other financial institutions should be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, where financial institutions provide a service of money or value transfer, or of money or currency changing, they should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.

INTERPRETIVE NOTE TO RECOMMENDATION 26
(REGULATION AND SUPERVISION OF FINANCIAL INSTITUTIONS)

Risk-based approach to Supervision

1. Risk-based approach to supervision refers to: (a) the general process by which a supervisor, according to its understanding of risks, allocates its resources to AML/CFT supervision; and (b) the specific process of supervising institutions that apply an AML/CFT risk-based approach.

2. Adopting a risk-based approach to supervising financial institutions' AML/CFT systems and controls allows supervisory authorities to shift resources to those areas that are perceived to present higher risk. As a result, supervisory authorities can use their resources more effectively. This means that supervisors: (a) should have a clear understanding of the money laundering and terrorist financing risks present in a country; and (b) should have on-site

and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the supervised institutions, including the quality of the compliance function of the financial institution or group (or groups, when applicable for Core Principles institutions). The frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions/groups should be based on the money laundering and terrorist financing risks, and the policies, internal controls and procedures associated with the institution/group, as identified by the supervisor's assessment of the institution/group's risk profile, and on the money laundering and terrorist financing risks present in the country.

3. The assessment of the money laundering and terrorist financing risk profile of a financial institution/group, including the risks of non-compliance, should be reviewed both periodically and when there are major events or developments in the management and operations of the financial institution/group, in accordance with the country's established practices for ongoing supervision. This assessment should not be static: it will change depending on how circumstances develop and how threats evolve.

4. AML/CFT supervision of financial institutions/groups that apply a risk-based approach should take into account the degree of discretion allowed under the RBA to the financial institution/group, and encompass, in an appropriate manner, a review of the risk assessments underlying this discretion, and of the adequacy and implementation of its policies, internal controls and procedures.

5. These principles should apply to all financial institutions/groups. To ensure effective AML/CFT supervision, supervisors should take into consideration the characteristics of the financial institutions/groups, in particular the diversity and number of financial institutions, and the degree of discretion allowed to them under the RBA.

Resources of supervisors

6. Countries should ensure that financial supervisors have adequate financial, human and technical resources. These supervisors should have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. Countries should have in place processes to ensure that the staff of these authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

METHODOLOGY FOR ASSESSING TECHNICAL COMPLIANCE WITH THE FATF RECOMMENDATIONS AND THE EFFECTIVENESS OF AML/CFT SYSTEMS
February 2013
EFFECTIVENESS ASSESSMENT

Immediate Outcome 3	Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.

Characteristics of an effective system

Supervision and monitoring address and mitigate the money laundering and terrorist financing risks in the financial and other relevant sectors by:

- preventing criminals and their associates from holding, or being the beneficial owner of, a significant or controlling interest or a management function in financial institutions or DNFBPs; and

- promptly identifying, remedying, and sanctioning, where appropriate, violations of AML/CFT requirements or failings in money laundering and terrorist financing risk management.

Supervisors (including SRBs for the purpose of the effectiveness assessment) provide financial institutions and DNFBPs with adequate feedback and guidance on compliance with AML/CFT requirements. Over time, supervision and monitoring improve the level of AML/CFT compliance, and discourage attempts by criminals to abuse the financial and DNFBP sectors, particularly in the sectors most exposed to money laundering and terrorist financing risks.

This outcome relates primarily to Recommendations 14, 26 to 28, 34 and 35, and also elements of Recommendations 1 and 40.

Note to Assessors:
Assessors should also consider the relevant findings, including at the financial group level, the level of international cooperation which supervisors are participating in when assessing this Immediate Outcome.

Core Issues to be considered in determining if the Outcome is being achieved

3.1. How well does licensing, registration or other controls implemented by supervisors or other authorities prevent criminals and their associates from holding, or being the beneficial owner of a significant or controlling interest or holding a management function in financial institutions or DNFBPs? How well are breaches of such licensing or registration requirements detected?

3.2. How well do the supervisors identify and maintain an understanding of the ML/TF risks in the financial and other sectors as a whole, between different sectors and types of institution, and of individual institutions?

3.3. With a view to mitigating the risks, how well do supervisors, on a risk-sensitive basis, supervise or monitor the extent to which financial institutions and DNFBPs are complying with their AML/CFT requirements?

3.4. To what extent are remedial actions and/or effective, proportionate and dissuasive sanctions applied in practice?

3.5. To what extent are supervisors able to demonstrate that their actions have an effect on compliance by financial institutions and DNFBPs?

3.6. How well do the supervisors promote a clear understanding by financial institutions and DNFBPs of their AML/CFT obligations and ML/TF risks?

a) Examples of Information that could support the conclusions on Core Issues

1. Contextual factors regarding the size, composition, and structure of the financial and DNFBP sectors and informal or unregulated sector (e.g., *number and types of financial institutions (including MVTS) and DNFBPs licensed or registered in each category; types of financial (including cross-border) activities; relative size, importance and materiality of sectors*).

2. Supervisors' risk models, manuals and guidance on AML/CFT (e.g., *operations manuals for supervisory staff; publications outlining AML/CFT supervisory / monitoring approach; supervisory circulars, good and poor practices, thematic studies; annual reports*).

3. Information on supervisory engagement with the industry, the FIU and other competent authorities on AML/CFT issues (e.g., *providing guidance and training, organising meetings or promoting interactions with financial institutions and DNFBPs*).

4. Information on supervision (e.g., *frequency, scope and nature of monitoring and inspections (onsite and off-site); nature of breaches identified; sanctions and other remedial actions* (e.g., *corrective actions, reprimands, fines) applied, examples of cases where sanctions and other remedial actions have improved AML/CFT compliance*).

b) Examples of Specific Factors that could support the conclusions on Core Issues

5. What are the measures implemented to prevent the establishment or continued operation of shell banks in the country?

6. To what extent are "fit and proper" tests or other similar measures used with regard to persons holding senior management functions, holding a significant or controlling interest, or professionally accredited in financial institutions and DNFBPs?

7. What measures do supervisors employ in order to assess the ML/TF risks of the sectors and entities they supervise/monitor? How often are the risk profiles reviewed, and what are the trigger events (e.g., changes in management or business activities)?

8. What measures and supervisory tools are employed to ensure that financial institutions (including financial groups) and DNFBPs are regulated and

comply with their AML/CFT obligations (including those which relate to targeted financial sanctions on terrorism, and to countermeasures called for by the FATF)? To what extent has this promoted the use of the formal financial system?

9. To what extent do the frequency, intensity and scope of on-site and off-site inspections relate to the risk profile of the financial institutions (including financial group) and DNFBPs?

10. What is the level of cooperation between supervisors and other competent authorities in relation to AML/CFT (including financial group ML/TF risk management) issues? What are the circumstances where supervisors share or seek information from other competent authorities with regard to AML/CFT issues (including market entry)?

11. What measures are taken to identify, license or register, monitor and sanction as appropriate, persons who carry out MVTs?

12. Do supervisors have adequate resources to conduct supervision or monitoring for AML/CFT purposes, taking into account the size, complexity and risk profiles of the sector supervised or monitored?

13. What are the measures implemented to ensure that financial supervisors have operational independence so that they are not subject to undue influence on AML/CFT matters?

ANNEX 3

COM (2013) 45 /3
2013/0025 (COD)

**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the prevention of the use of the financial system for the purpose of
money laundering and terrorist financing: extracts**
(Text with EEA relevance)

EXPLANATORY MEMORANDUM

(…)

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

(…)

The impact assessment concluded that the best options to improve the existing situation would be:
- (…)
- *Risk-Sensitive Approach to supervision:* specific recognition in the Directive that supervision can be carried out on a risk-sensitive basis;
- (…)

5. ADDITIONAL INFORMATION

Detailed explanation of the proposal

The main modifications to the Third AMLD are:
- *(…)*
- *Risk-based approach:* The Directive recognises that the use of a risk-based approach is an effective way to identify and mitigate risks to the financial system and wider economic stability in the internal market area. The new measures proposed would require evidence-based measures to be implemented in three main areas, each of which would be supplemented with a minimum list of factors to be taken into consideration or guidance to be developed by the European Supervisory Authorities:
  (a) (…)
  (b) (…)
  (c) The proposal would recognise that the resources of supervisors can be used to concentrate on areas where the risks of money laundering and terrorist financing are greater. The use of a risk-based approach would mean that evidence is used to better target the risks.
- *(…)*
- *European Supervisory Authorities (ESA):* the proposal contains several areas where work by the ESA is envisaged. In particular, EBA, EIOPA and

ESMA are asked to carry out an assessment and provide an opinion on the money laundering and terrorist financing risks facing the EU. In addition, the greater emphasis on the risk based approach requires an enhanced degree of guidance for Member States and financial institutions on what factors should be taken into account when applying simplified customer due diligence and enhanced customer due diligence and when applying a risk-based approach to supervision. In addition, the ESAs have been tasked with providing regulatory technical standards for certain issues where financial institutions have to adapt their internal controls to deal with specific situations.

(…)

HAVE ADOPTED THIS DIRECTIVE:

(…)

CHAPTER VI
POLICIES, PROCEDURES AND SUPERVISION

(…)

SECTION 2
SUPERVISION

Article 44

1. Member States shall provide that currency exchange offices and trust or company service providers shall be licensed or registered and providers of gambling services be authorised.

2. In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.

3. In respect of the obliged entities referred to in Article 2(1)(3) (a), (b), (d) and (e), Member States shall ensure that competent authorities take the necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities.

Article 45

1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.

2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of these authorities maintain high professional

standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.

3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.

4. Member States shall ensure that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive.

5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established shall cooperate with the competent authorities of the Member State in which the obliged entity has its head office, to ensure effective supervision of the requirements of this Directive.

6. Member States shall ensure that competent authorities that apply a risk-sensitive approach to supervision:

    (a) have a clear understanding of the money laundering and terrorist financing risks present in their country;

    (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and

    (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.

7. The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in the management and operations of the obliged entity.

8. Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its policies, internal controls and procedures.

9. In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.

10. EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 on the factors to be applied when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive.