

EBA/DC/2020/309

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EBA REGULAR USE

Mandate of the Standing Committee on anti-money laundering and countering terrorist financing (AMLSC)

I. Framework and tasks

1. Article 9(a) of Regulation (EU) No 1093/2010 (the 'EBA Regulation') provides that the European Banking Authority ('the EBA') shall establish a permanent internal committee on anti-money laundering and countering terrorist financing ('AMLSC').
2. The main objective of the AMLSC is to coordinate measures in order to prevent and counter the use of the financial system for the purposes of money laundering and terrorist financing ('ML/TF') and to prepare, in the context of Directive 2015/849/EU (AML Directive) and Regulation 2015/847/EU (Wire Transfer Regulation), all draft decisions to be taken by the European Banking Authority ('EBA') in related matters.

II. Types of deliverables

3. The tasks of the AMLSC include in particular:
 - a. Preparing draft risk assessments on competent authorities to assess their strategies, capacities and resources to address the most important emerging risks regarding to ML/TF;
 - b. Preparing the following draft decisions related to AML/CFT (Anti-money laundering and counter-terrorist financing) matters:
 - (i) Breach of Union Law (Article 17 of the EBA Regulation)
 - Recommendation to a competent authority;
 - Decision requiring a financial sector operator to take all necessary action to comply with its obligation under Union law;

- (ii) Request for investigation to Competent Authorities (Article 9b of the EBA Regulation)
 - Decision requiring a competent authority supervising financial sector operators to investigate possible breaches of Union law by a financial sector operator;
 - Decision requiring a competent authority to consider imposing sanctions on a financial sector operator in respect of such breaches;
 - Decision requiring a competent authority to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligation under Union law or national laws transposing Directives or exercising options granted to Member States by Union law.
 - (iii) Settlement of disagreement, whenever the conciliation phase has failed.
 - c. Developing technical standards, guidelines and recommendations on AML/CFT matters.
Including in the first year:
 - draft regulatory standards specifying the definition of ‘weaknesses’ in accordance with Article 9a (1) of the EBA Regulation, by January 2021;
 - draft regulatory technical standards specifying how the information is analyzed in accordance with Article 9a (2) of the EBA Regulation, by January 2021;
 - d. Developing responses to the questions posed through the EBA’s ‘Questions and Answers’ (Q&A) tool relating to the AML Directive and the Wire Fund Transfer Regulation.
 - e. Developing the EBA Supervisory Handbook in relation to AML/CFT supervision in the Supervisory Handbook.
 - f. Adopting measures to prevent and counter ML/TF;
 - g. Developing common guidance and standards for preventing and countering ML/TF in the financial sector;
 - h. Establishing systems for collecting information relating to AML/CFT weaknesses identified by competent authorities, as well the measures taken in response.
 - i. Advising on the establishment of an AML/CFT central database of information and its analysis.
 - j. Conducting analysis on an aggregate basis for the opinion on the risks of ML/TF affecting the Union’s financial sector that the EBA is requested to deliver pursuant to paragraph 5 of Article 6 of the AML Directive.
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- k. Issuing opinions on the risks of ML/TF affecting the Union's financial sector that the EBA is requested to deliver pursuant to paragraph 5 of Article 6 of the AML Directive every two years.
- l. Taking over the ongoing work of the Joint Committee Sub-Committee on Anti-Money Laundering.

III. Internal organisation

4. The composition of the AMLSC should be as follows:

Members

- a. High-level representatives with expertise and decision-making powers in the area of the prevention of the use of the financial system for the purposes of ML/TF of the authorities and bodies of all Member States competent for ensuring compliance with the requirements of the AML Directive and the Wire Transfer Regulation by financial sector operators. They shall be voting Members.
- b. High level representatives with expertise of different business models and sectoral specificities from the EBA, the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA) national public authorities competent for ensuring compliance with the requirements of the AMLD Directive and the Wire transfer Regulation by financial sector operators in each European Free Trade Association (EFTA) state and the EFTA Surveillance Authority, which shall be non-voting Members.

Observers

5. High-level representatives of the following shall also participate in the AMLSC (each being an 'Observer'):
 - the European Commission;
 - the European Systemic Risk Board (ESRB);
 - the Supervisory Board of the European Central Bank;

Representation

6. Each relevant Board of Supervisor Member shall send to the EBA the names of the Members as well as their contact details.
7. Where more than one authority is competent for ensuring compliance with the AML Directive's requirements for financial sector operators, one representative may be nominated for each competent authority.

8. Each competent authority and Union body shall be responsible for nominating an alternate from its staff, who may replace the Member when prevented from attending and vote in the Member's place. Alternates of voting Members shall have expertise and decision-making powers in the area of AML/CFT.

Voting

9. Where there are multiple Members from the same Member State, one member shall be identified as the voting Member.
10. Irrespective of the number of competent authorities from one Member State represented in AMLSC meetings, each Member State shall have one vote.

Decision-making

Standard procedure

11. Members of the AMLSC shall strive for consensus when adopting the draft decisions to be sent to the Board of Supervisors for adoption. In the absence of consensus, draft decisions shall be adopted by simple majority.
12. Abstentions shall not be counted as approval or as objections and shall not be considered when calculating the number of vote cast.
13. Members shall normally attend AMLSC meetings in person. Meetings may also be held by video or telephone conference call or other technical means.
14. The AMLSC's Chairperson shall invite the Chairpersons of the EBA, EIOPA and ESMA to provide written observations on each draft decision adopted by AMLSC for consideration by the Board of Supervisors. The Chairpersons of the EBA, EIOPA and ESMA shall normally be given no less than 5 working days to provide any observations.
15. Regarding breach of Union law, settlement of disagreements between competent authorities and request for investigation related to the prevention and countering of ML/TF, the AMLSC Chairperson shall invite the Chairpersons of ESMA and/or EIOPA to notify their Authority's views on, and whether they agree with, any draft decision within 20 days from the date of that draft decision where it concerns:
 - in relation to EIOPA, financial institutions as defined in Article 4(1) of Regulation (EU) No 1094/2010 or any of the competent authorities supervising them.
 - in relation to ESMA, financial market participants as defined in Article 4(1) of Regulation (EU) No 1095/2010 or any of the competent authorities supervising them.

Written Procedure

16. Where appropriate, draft decisions may be adopted by written procedure unless at least one third of the voting Members object. In principle, all voting Members should express their approval (I agree), objection (I disagree) or express abstention (I abstain).

17. A proposal from the AMLSC Chairperson shall be circulated to the AMLSC:

- stating the time and date by which votes must be cast;
- stating whether a failure to vote shall be considered as a vote for the proposal, and whether a minimum of vote is required;
- providing any other material considered necessary for making the decision.

18. Where the Chairperson has informed the AMLSC that a failure to vote will be considered a vote for a proposal, if within 48 hours three or more voting Members request in writing to the Chairperson that they consider the vote in question to be of significant importance, then:

- a. a failure to vote shall not be considered a vote for the proposal;
- b. the time and date by which votes must be cast shall if necessary be extended to ensure a minimum of 24 hours for voting Members to vote on the revised basis; and
- c. the Chairperson shall notify the AMLSC accordingly.

19. Normally, a written procedure shall require not less than five working days for consideration by every voting Member of the AMLSC.

20. Votes on decisions taken by written procedure shall be in written form.

21. The result of a written procedure shall be notified without delay to all Members and Observers of the AMLSC.

Chairperson

22. The Chairperson shall be elected by and from the voting Members and shall preferably be a member of the Board of Supervisors.

23. The vote to elect the Chairperson shall be held at the first AMLSC meeting and for the subsequent Chairpersons, at the AMLSC meeting following the end of the Chairperson's mandate.

24. The Chairperson shall be responsible for ensuring the tasks allocated to the AMLSC in accordance with its mandate.

25. The Chairperson shall act independently, objectively and in a non-discrimination manner in the interest of the Union as a whole.
26. The Chairperson shall be responsible for ensuring the tasks allocated to the AMLSC are delivered.
27. The term of the Chairperson's appointment shall be two years and can be renewed.
28. The Chairpersons of the different EBA Standing Committees shall co-ordinate in areas of common interest.
29. In the absence of the Chairperson, the EBA Member shall carry out the functions of the Chairperson.

Meetings

30. Meetings of the AMLSC shall be convened by the Chairperson on the Chairperson's own initiative.
31. Meetings dates and places of future AMLSC meetings shall be notified by the EBA staff to AMLSC Members and Observers as soon as practicable. Invitations shall be sent to email addresses notified by each Member and Observer to the EBA for this purpose.
32. Meetings shall normally be held at the EBA's premises.
33. Meetings shall be directed by the Chairperson and supported by EBA staff. Meetings should be arranged to follow the schedule of the Board of Supervisors meetings and they should take place at least 3 times per year. Additional meetings can be scheduled if necessary.

Conflict of interest

34. Before any meeting, Members, their alternates, Observers and any representative participating in the AMLSC meeting shall declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any item of the agenda.
35. In case of existence of any interest in relation to any item of the agenda, the individual concerned ('conflicted individual') shall abstain from participating in the discussion of and voting upon that item.
36. Unless a Member requests a vote on whether the conflicted individual should attend the discussion and voting, the conflicted individual may remain present for the agenda item but shall not participate in the related discussion and voting.
37. This shall not affect any right to be heard, whether pursuant to Article 39(2) of the EBA Regulation or otherwise, of a competent authority or other addressee of an EBA act, which shall be fulfilled before the act is tabled for decision.

38. Where the agenda item concerns a matter on which a right to be heard has been provided to a competent authority, the conflicted individual may present the position of that competent authority in relation to that agenda item provided that the presentation takes place prior to, and is separate from, the discussion and voting on that agenda item.
39. Members, their alternates, Observers and any representative participating in the AMLSC meeting shall comply with the practical arrangements for implementing these rules on declaration of interest and for the prevention and management of conflicts of interest set out in the Decision of the European Banking Authority on the EBA's Policy on Independence and Decision Making Processes for avoiding Conflict of Interest (Conflict of Interest Policy) for Non-Staff.

Substructures

40. The AMLSC may establish internal working groups on specific aspects of its work with a view to preparing draft AMLSC decisions, which shall be open for participation to staff from the authorities of all Members and Observers.
41. Permanent internal working groups shall be approved by the Management Board.
42. Internal working groups shall be chaired by EBA staff or by a technical expert from a competent authority.

IV. Review of the mandate

43. Every two years or earlier, where appropriate, the mandate of the AMLSC shall be subject to review and endorsement by the EBA's BoS and, to the extent necessary, adapted to reflect new developments.

V. Effective date

44. This mandate, approved by the EBA's BoS on 22/01/2020, shall come into effect immediately.