



JC 2019 81

16 December 2019

Final Guidelines

on cooperation and information exchange for the purpose of
Directive (EU) 2015/849 between competent authorities supervising
credit and financial institutions

The AML/CFT Colleges Guidelines

1. Compliance and reporting obligations

Status of these joint guidelines

This document contains joint guidelines issued pursuant to Articles 16 and 56, subparagraph 1, of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European supervisory authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC; Regulation (EU) No 1094/2010 establishing a European supervisory authority (European Insurance and Occupational Pensions Authority); and Regulation (EU) No 1095/2010 establishing a European supervisory authority (European Securities and Markets Authority) – ‘the ESA regulations’. In accordance with Article 16(3) of the ESA regulations, competent authorities and financial institutions must make every effort to comply with the guidelines.

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

Reporting requirements

In accordance with Article 16(3) of the ESA regulations, competent authorities must notify the respective European supervisory authority (ESA) of whether they comply or intend to comply with these joint guidelines, or otherwise, with reasons for non-compliance, by **dd.mm.yyyy** (2 months after issuance). In the absence of any notification by this deadline, competent authorities will be considered non-compliant by the respective ESA. Notifications should be sent to compliance@eba.europa.eu, compliance@eiopa.europa.eu and compliance@esma.europa.eu with the reference ‘JC 2019 81’. A template for notifications is available on the ESAs’ websites. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

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



2. Subject matter, definitions and addressees

Subject matter

These guidelines:

- a) establish a framework for cooperation and information exchange between competent authorities through either bilateral engagements or anti-money laundering/combating the financing of terrorism (AML/CFT) colleges;
- b) govern the establishment and functioning of AML/CFT colleges.

Definitions

Unless otherwise specified, terms used and defined in Directive (EU) 2015/849 and Regulation (EU) No 575/2013 have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Competent authority	A competent authority defined in point (2)(ii) of Article 4 of Regulation (EU) No 1093/2010; point (2)(ii) of Article 4 of Regulation (EU) No 1094/2010; and point (3)(ii) of Article 4 of Regulation (EU) No 1095/2010 that is competent for ensuring firms' compliance with the requirements of Directive (EU) 2015/849. In line with point (b) of Article 1 of Decisions of the EEA Joint Committee No 199/2016, No 200/2016 and No 201/2016 of 30 September 2016, the terms 'Member State(s)' and 'competent authorities' shall be understood to include, in addition to their meaning in the abovementioned Regulation, the European Free Trade Association (EFTA) states and their competent authorities, respectively.
Third-country undertaking	An undertaking established in a third country, which, were it established in a Member State, would qualify as a credit institution or financial institution referred to in points (1) and (2) of Article 3 of Directive (EU) 2015/849.
Firm	A credit institution or financial institution referred to in points (1) and (2) of Article 3 of Directive (EU) 2015/849.
Firm operating on a cross-border basis	A firm with branches established in another Member State or in a third country or a group of credit and financial institutions



referred to in point (15s) of Article 3 of Directive (EU) 2015/849 with subsidiaries and branches established in a Member State or in a third country.

Cross-border establishment

A branch or any other form of establishment as referred to in Article 45(2) and Article 48(4) of Directive (EU) 2015/849 of a firm that operates in a Member State other than the Member State where the head office of the firm is established or in a third country; or the subsidiary of a parent undertaking established in a Member State other than the Member State where that parent undertaking has been established or in a third country.

EU establishment

The direct or indirect subsidiary of a third-country undertaking that has been established in a Member State ('EU subsidiary of a third-country undertaking') or an EU branch, or any other form of establishment as referred to in Article 45(2) and Article 48(4) of Directive (EU) 2015/849 of that third-country undertaking or any of its EU subsidiaries.

For cross-border establishments set up in at least three Member States, the lead supervisor means:

Lead supervisor

- (a) the competent authority of the Member State where the consolidating supervisor referred to in Article 111 of Directive 2013/36/EU¹ or the group supervisor referred to in Article 212(1)(d) of Directive 2009/138/EC² is situated; or, where the consolidating supervisor is the European Central Bank (ECB), the competent authority of the Member State where the consolidating supervisor would have been situated prior to the application of Regulation (EU) No 1024/2013;³ or
- (b) for a firm, other than a credit institution or an insurance undertaking, with cross-border establishments, which are:

¹ Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

² Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

³ Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.



- i. subsidiaries, the competent authority of the home Member State of the parent undertaking;
 - ii. not subsidiaries, the competent authority of the home Member State of that firm; or
- (c) for a firm operating on a cross-border basis, which is a subsidiary of an undertaking other than a credit institution or a financial institution referred to in points (1) and (2) of Article 3 of Directive (EU) 2015/849, the competent authority of a Member State as defined in points b(i) and b(ii) above.

For EU establishments set up in at least three Member States, the lead supervisor means:

- (a) between branches and subsidiaries, the competent authority of the Member State where the subsidiary is established;
- (b) among subsidiaries or among branches, the competent authority of the Member State where the subsidiary or the branch that presents the highest level of ML/TF risk in accordance with the relevant competent authority's risk assessment is established; or
- (c) among subsidiaries or among branches, with the same ML/TF risk levels, the competent authority of the Member State where the subsidiary or the branch with the highest total value of its assets is established.

Where the lead supervisor cannot be identified, the relevant European supervisory authority may on its own initiative or upon request from the competent authorities involved provide assistance, including by means of mediation.

AML/CFT college

A college, consisting of the lead supervisor, permanent members and observers, that is set up to provide a permanent structure for cooperation and information sharing between these parties for the purposes of supervising a firm operating on a cross-border basis.

Prudential supervisor

The competent authority defined in point (2)(i) of Article 4 of Regulation (EU) No 1093/2010, in point (2)(i) of Article 4 of



Regulation (EU) No 1094/2010 and in point (3)(i) of Article 4 of
Regulation (EU) No 1095/2010.



Addressees

8. These guidelines are addressed to competent authorities.



5. Implementation

Date of application

These guidelines apply from 10 January 2020.

Transitional provisions

References to the ESAs in these guidelines should be construed as references to the European supervisory authority to which Union law confers the tasks related to preventing and countering money laundering and financing of terrorism in the financial system across the EU.

1. Guidelines on the cooperation and information exchange for the purposes of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions

Guideline 1: Mapping

- 1.1 Competent authorities should perform mapping of all the following:
 - (a) firms operating on a cross-border basis that are established in their Member State and those firms' cross-border establishments in other Member States or third countries;
 - (b) cross-border and EU establishments operating in their Member State; and
 - (c) third-country undertakings linked to the EU establishments set out in (b) above.
- 1.2 To perform the mapping for the purposes of these guidelines, competent authorities should use mapping:
 - (a) already available to them in their capacity as prudential supervisors;
 - (b) communicated to them by prudential supervisors; or
 - (c) carried out by them as part of their risk-based supervision framework, which is set out in the ESAs' Joint Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis (JC 2016 72), published on 16 November 2016 ('the Risk-Based Supervision Guidelines').
- 1.3 Competent authorities should ensure that the mapping referred to in Guideline 1.2 above:
 - (a) contains sufficient information for competent authorities to ensure their compliance with these guidelines; and
 - (b) is supported by a ML/TF risk assessment of firms and sectors within their supervisory remit.
- 1.4 When performing the mapping for the purposes of these guidelines, competent authorities should gather the necessary information from all available sources including, but not limited to:



- (a) their own supervisory activities, including annual reporting;
 - (b) other competent authorities or AML/CFT supervisory authorities in third countries, to the extent possible;
 - (c) public registers of authorised/licensed firms, including the registers of the European Banking Authority (EBA); and
 - (d) prudential supervisors, namely information that they have about the firm or group structures of firms that are subject to their prudential supervision, including information that is obtained as part of authorisations, passporting notifications and the establishment of colleges of supervisors, where relevant.
- 1.5 When performing the mapping, competent authorities should use the template provided in Annex I.
- 1.6 When completing the mapping, competent authorities should include at least:
- (a) names of all Member States, EEA EFTA states or third countries where the firm operating on a cross-border basis has its cross-border establishments;
 - (b) names of all Member States and EEA EFTA states where the third-country undertaking has its EU establishments, to the extent that this is known to the competent authority;
 - (c) the name of the third country where the third-country undertaking linked to the EU establishments has its head office; and
 - (d) the level of ML/TF risk associated with the firm operating on a cross-border basis, the cross-border establishments and the EU establishments, to the extent that this is known to the competent authority, in line with Steps 1 and 2 of the Risk-Based Supervision Guidelines.
- 1.7 Competent authorities should ensure that the mapping remains up to date. Competent authorities should review and update the mapping regularly, and on an ad hoc basis when made aware of any relevant changes in the ownership structure of the firm operating on a cross-border basis or of the third-country undertaking.
- 1.8 Competent authorities should submit the mapping and its updates thereafter to the relevant European supervisory authority.

Guideline 2: Conditions for establishing an AML/CFT college

- 2.1 After performing the mapping in accordance with Guideline 1, the lead supervisor should identify the firms operating on a cross-border basis that meet the conditions referred to in Guideline 2.2 for the establishment of an AML/CFT college.



- 2.2 The conditions for establishing an AML/CFT college are met when:
- (a) a firm operating on a cross-border basis has set up cross-border establishments in at least two different Member States other than the Member State where its head office is situated; or
 - (b) a third-country undertaking has set up EU establishments in at least three Member States; branches of an EU subsidiary of a third-country undertaking set up in a Member State different from the Member State where the EU subsidiary has been established count as separate establishments.
- 2.3 Where the conditions for setting up an AML/CFT college are not met, competent authorities should, at least, ensure cooperation and information exchange on a bilateral basis in accordance with Guideline 14.

Guideline 3: Establishing and maintaining an AML/CFT college

- 3.1 Where the conditions set out in Guideline 2 are met, the lead supervisor, in cooperation with the competent authorities of the cross-border and EU establishments, should establish and maintain an AML/CFT college.
- 3.2 The lead supervisor should prioritise the establishment of AML/CFT colleges for those firms operating on a cross-border basis and EU establishments that are classified as high risk for ML/TF purposes, following the risk assessment carried out in line with the Risk-Based Supervision Guidelines, and take into consideration relevant information published by the European Commission, including the European Commission's Supranational Risk Assessment published in line with Article 6 of Directive (EU) 2015/849.
- 3.3 Where a college has not been established by the lead supervisor despite the relevant conditions set out in these guidelines having been met, competent authorities of cross-border and EU establishments of the cross-border firm for which the college has not been established should write to the lead supervisor stating why a college should be established. As part of this communication, competent authorities should set out:
- (a) why they consider the conditions for setting up a college to have been met;
 - (b) the ML/TF risk associated with the relevant cross-border or EU establishment, including in particular any indications of breaches or potential breaches of the Anti-Money Laundering Directive (AMLD) framework at the individual level or at group level; and
 - (c) the impact that the non-establishment of a college would have on their supervisory functions and in particular their ability to effectively monitor the cross-border or EU establishment's compliance with its AML/CFT obligations.



The lead supervisor should provide a reasoned response to the competent authorities within a month of receiving the written request. If the lead supervisor does not set up a college and the competent authorities disagree with the reasons provided, they should contact the EBA with a request for non-binding mediation with regard to whether the college should be established.

- 3.4 Where the EBA is of the view that a college should be established and the lead supervisor does not establish the college:
- (a) where requested by competent authorities of cross-border and EU establishments, the lead supervisor should send without undue delay all information necessary to enable them to effectively supervise the cross-border and EU establishments within their remit;
 - (b) consideration may be given to whether Article 9b of Regulation 1093/2010 should apply; and
 - (c) the non-establishment of the college should be deemed as the lead supervisor being non-compliant with these guidelines.
- 3.5 Where a competent authority has not received the information requested from the lead supervisor in accordance with point (a) of paragraph 3.4, it should send to the EBA a request for binding mediation.

Guideline 4: Cooperation between AML/CFT colleges and prudential supervisors

- 4.1 Where a college of supervisors referred to in Directive 2013/36/EU or in Directive 2009/138/EC has been established, the following should be ensured:
- (a) the lead supervisor should endeavour to obtain from the consolidating supervisor the mapping of the group performed in accordance with Article 2 of Commission Delegated Regulation (EU) 2016/98 and Article 2 of Commission Implementing Regulation (EU) 2016/99;
 - (b) the lead supervisor should provide the consolidating supervisor or the group supervisor with the mapping that it has performed in accordance with Guideline 1.
- 4.2 The lead supervisor should engage with a consolidating supervisor or the chair of the college of prudential supervisors and, if different, with the chair of the AML/CFT substructure of the college of prudential supervisors where such substructure exists, in order to ensure cooperation and information exchange between AML/CFT and prudential supervisors as relevant for their tasks and as foreseen by applicable legislation. Such cooperation should:



- (a) include the exchange of relevant information between the AML/CFT college and the college of prudential supervisors of the firm operating on a cross-border basis or the group for which the AML/CFT college has been established; and
- (b) ensure participation in the meetings of their respective colleges, when a topic of relevance for the other college members is included in the agenda of their meetings.

Guideline 5: Composition of an AML/CFT college

Permanent members

- 5.1 The lead supervisor should always invite the following authorities to participate in the AML/CFT college as permanent members:
- (a) all competent authorities responsible for the AML/CFT supervision of all cross-border establishments of the firm operating on a cross-border basis;
 - (b) the competent authorities responsible for the AML/CFT supervision of all EU establishments;
 - (c) the appropriate ESA (the EBA, ESMA or EIOPA).
- 5.2 The lead supervisor should be responsible for identifying permanent members referred to in Guideline 5.1 and recording their names and contact details in the contact list for the relevant AML/CFT college in line with Guideline 6. To identify competent authorities, the lead supervisor may refer to the register of competent authorities published by the European Commission in line with Article 48 (1a) of Directive (EU) 2015/849.
- 5.3 Upon receipt of the invitation to participate in the AML/CFT college, permanent members should confirm their participation in writing to the lead supervisor within 10 working days.

Observers

- 5.4 The lead supervisor should invite to participate in the AML/CFT college as observers the prudential supervisors of firms operating on a cross-border basis, the cross-border and EU establishments and the AML/CFT authorities of third countries where cross-border establishments operate. It may also invite the prudential supervisors of third countries where cross-border establishments operate and the financial intelligence unit (FIU) of the Member State where the lead supervisor is located to participate.
- 5.5 The lead supervisor should be responsible for identifying observers referred to in Guideline 5.4 and recording their names and contact details in the contact list for the relevant AML/CFT college in line with Guideline 6. To identify the relevant authorities, the lead supervisor may consult the European supervisory authorities.



- 5.6 When deciding whether to invite a particular observer, the lead supervisor should draw up a list of potential observers in line with Guideline 5.5. In doing so, the lead supervisor should consider all proposals received from permanent members in writing within a reasonable time and their justification for inviting a particular observer to the AML/CFT college. In order to propose an observer, the lead supervisor or the permanent member proposing the invitation of the observer should carry out the following:
- (a) An assessment of the equivalence of the confidentiality regime applicable to a third-country AML/CFT or prudential supervisory authority. As part of this assessment, the lead supervisor or a permanent member may refer to the recommendation on equivalence of non-EU authorities for participation in supervisory colleges published on the EBA's website, which can be an important input in the overall equivalence assessment of the third-country authority. In addition, the European Commission's equivalence decisions in the area of the Solvency II Directive⁴ and the adequacy decisions in the area of data protection may also be consulted,⁵ as appropriate.
 - (b) An assessment of the impact that the attendance of the observer might have on the functioning of the AML/CFT college.
 - (c) An assessment of the third-country AML/CFT or prudential supervisor's ability and preparedness to sign bilateral cooperation agreements with all permanent members pursuant to Article 57(a)(5) of AMLD.
- 5.7 The lead supervisor should share a list of potential observers together with the outcome of the assessment carried out in line with Guideline 5.6 with all permanent members of the AML/CFT college and the existing observers.
- 5.8 Permanent members should raise any observations about and objections to the proposed observers being invited to participate in the AML/CFT college within the deadline set by the lead supervisor. These observations and objections should be accompanied by a written rationale setting out the basis for these observations and objections, and how, in the permanent member's view, the proposed observer's participation in the AML/CFT college could affect college proceedings.
- 5.9 The lead supervisor may invite an observer to participate in the AML/CFT college only where none of the permanent members objects and where the potential observer agrees to abide by the terms of participation of observers, which should be individually drafted by the lead supervisor, and agreed with the relevant authorities, in respect of each observer.
- 5.10 The EBA may be consulted or act on its own initiative to conciliate or mediate any issue arising with regard to the invitation and participation of observers.

⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

⁵ See Article 45(3) of Regulation (EU) 2016/679 or Article 36(3) of Directive (EU) 2016/680.



Invited participants

- 5.11 The lead supervisor, either on its own initiative or upon request from a permanent member, may consider inviting other relevant participants to attend a particular session of the AML/CFT college meeting where:
- (a) the attendance of these participants would benefit the AML/CFT college; such participants may include, but are not limited to, the firm, the FIUs other than the FIU set out in Guideline 5.4, auditors or consultants; or
 - (b) particular matters discussed at the AML/CFT college may have an impact on the work carried out by the invited participant; such participants may indicatively include resolution authorities, the Single Resolution Board or deposit guarantee schemes.
- 5.12 The lead supervisor should consider all proposals in writing from permanent members about potential participants and their justification for inviting them. The lead supervisor should consult with and receive approval from all permanent members before inviting these participants to attend a particular session of the AML/CFT college meeting, and inform observers of such a decision.
- 5.13 Permanent members should raise any concerns about or objections to the proposed participants within the deadline set by the lead supervisor and should support them with a written rationale setting out the basis for these concerns or objections.

Guideline 6: Contact lists

- 6.1 The lead supervisor should maintain a contact list of all permanent members and observers by completing a template attached to the cooperation and information-sharing agreement in Annex II and review it regularly.
- 6.2 The lead supervisor should share the list compiled in line with Guideline 6.1 with all permanent members and observers.
- 6.3 Permanent members and observers should provide their contact details to the lead supervisor and inform it of any changes without undue delay.

Guideline 7: AML/CFT college meetings

Scheduled meetings

- 7.1 The lead supervisor, in consultation with permanent members, should determine the form and frequency of AML/CFT college meetings, taking into account at least the following factors:
- (a) the lead supervisor's assessment of the ML/TF risk associated with the firm and its cross-border establishments or EU establishments for which the AML/CFT college is

established, which the lead supervisor has determined in line with the ESAs' Risk-Based Supervision Guidelines and the Risk Factors Guidelines;

- (b) the views of permanent members;
 - (c) the urgency and timeliness of the matter;
 - (d) the availability of permanent members;
 - (e) the impact on the effectiveness and functioning of the AML/CFT college; and
 - (f) any significant changes to the level of ML/TF risk associated with the firms or their cross-border or EU establishments for which the AML/CFT college is established.
- 7.2 The first meeting of any newly established AML/CFT college should be a physical meeting, unless the permanent members and the lead supervisor agree that a different form for the meeting is appropriate, taking into account the factors set out in Guideline 7.1 points (a) to (e) above.
- 7.3 Where the lead supervisor determines, having regard to the views expressed by the permanent members, that the firm operating on a cross-border basis or EU establishments present a high risk of ML/TF, the lead supervisor should convene at least one physical AML/CFT college meeting per year, unless permanent members agree on a different frequency or form of the meeting, taking into account the factors set out in Guideline 7.1.
- 7.4 To the extent that this is relevant and possible, the lead supervisor, in consultation with permanent members, should organise a physical meeting of the AML/CFT college immediately before, after or at the same time as the meeting of the college of prudential supervisors to facilitate the exchange of information between the competent authorities and prudential supervisors.
- 7.5 In all cases not addressed in Guideline 7.3, the lead supervisor should, in consultation with permanent members, agree on the frequency or form of the meeting, taking into account the factors set out in Guideline 7.1.
- 7.6 The lead supervisor should ensure that scheduled AML/CFT college meetings include at least:
- (a) exchange of information on the firm operating on a cross-border basis and its cross-border establishments or the EU establishments including:
 - (i) permanent members' assessment of the ML/TF risk profile of the firm operating on a cross-border basis or the EU establishments;
 - (ii) early warnings of emerging ML/TF risks;

- (iii) crystallised ML/TF risks and wider supervisory findings (or provisional findings where serious breaches have been identified) relating to the AML/CFT policies and procedures, including the application of group-wide policies and procedures, by the firm operating on a cross-border basis or EU establishments, including a number and analysis of suspicious transactions reports filed, where such information is available;
 - (iv) planned or recently completed AML/CFT supervisory actions including on-site and off-site inspections;
 - (v) sanctions or other corrective actions or measures that have been considered or imposed for breaches of AML/CFT obligations;
 - (vi) other supervisory or enforcement measures, including measures applied by prudential supervisors, where relevant, such as capital add-on based on ML/TF risk, or measures and decisions taken on the grounds of ML/TF risk with regard to the authorisation, qualifying holdings, governance, internal controls, and fitness and propriety;
- (b) a consideration of the need for a common approach and coordinated actions in accordance with Guidelines 12 and 13.

Ad hoc meetings

- 7.7 The lead supervisor, either on its own initiative or upon request from one or more permanent members, should organise an ad hoc meeting of the AML/CFT college where an ML/TF risk has crystallised or a serious ML/TF risk has emerged, such as:
- (a) an alleged involvement of either the firm operating on a cross-border basis, or the cross-border establishment or the EU establishment in an international ML/TF scheme; or
 - (b) a high level of non-compliance of either the firm operating on a cross-border basis, or the cross-border establishment or the EU establishment with AML/CFT standards that could have an impact in other jurisdictions.
- 7.8 The lead supervisor should organise a meeting as described in Guideline 7.7 without delay and determine, in consultation with permanent members, the most appropriate form for the meeting.
- 7.9 Where the lead supervisor fails to organise an ad hoc meeting of the AML/CFT college as described in Guideline 7.8, one or more permanent members should organise the meeting and ensure that other permanent members are made aware of the meeting and the issues that will be discussed.



7.10 Where an ML/TF risk has crystallised and urgent action is required, one or more permanent members may organise an ad hoc meeting without delay and ensure that other permanent members are made aware of the meeting.

7.11 Guideline 7.6 of these guidelines does not apply in respect of ad hoc meetings.

Guideline 8: Written cooperation and information-sharing agreement

8.1 For each AML/CFT college, the lead supervisor and the permanent members should have a written cooperation and information-sharing arrangement (the 'AML/CFT cooperation agreement') in place, and should address, with regard to the permanent members, at least:

- (a) the scope of mutual assistance, cooperation and information exchange;
- (b) the process to be followed for the provision of mutual assistance, including requests for cooperation and information exchange;
- (c) coordination of supervisory actions (including joint inspections);
- (d) confidentiality restrictions and permissible uses of information;
- (e) the rules governing the settlement of disputes; and
- (f) the language that should be used for communications within the AML/CFT college.

8.2 The lead supervisor should complete a template of the AML/CFT cooperation agreement provided in Annex II for all AML/CFT colleges. When the template AML/CFT cooperation agreement is used, prior approval from permanent members is not required. The lead supervisor should communicate the finalised AML/CFT cooperation agreement to all permanent members and observers and to the consolidating supervisor, where relevant.

8.3 The lead supervisor should amend the AML/CFT cooperation agreement referred to in Guideline 8.2 if it considers it necessary or upon request from one or more permanent members. The lead supervisor should transmit the amended AML/CFT cooperation agreement to all permanent members and observers. The lead supervisor should finalise the written agreement, having regard to any views expressed by the permanent members at least to the extent that they were received within a set deadline. The lead supervisor should communicate the final AML/CFT cooperation agreement to all permanent members and observers.

8.4 The lead supervisor should keep the AML/CFT cooperation agreement referred to in Guideline 8.2 or 8.3 under review and update it where necessary, subject to prior consultation with permanent members.

Guideline 9: Scope of mutual assistance

9.1 Permanent members and, where this is foreseen in the terms of participation annexed to the AML/CFT cooperation agreement, observers should provide each other with the fullest mutual assistance in any matters relevant to the AML/CFT supervision or AML/CFT-related aspects of the prudential supervision of the firm operating on a cross-border basis or EU establishments for which the AML/CFT college has been established. Mutual assistance includes cooperation and information exchange in relation to the firm operating on a cross-border basis, the cross-border establishment or the EU establishment, to the extent that such information exchange is permitted by the applicable legislation while having reference to Article 50a and Article 57a(4) of the AMLD, in relation to, but not limited to:

- (a) the supervision of that firm, the cross-border establishment or the EU establishment in line with the Risk-Based Supervision Guidelines, in particular:
 - (i) when testing the application of AML/CFT policies and procedures, including the application of group-wide AML/CFT policies and procedures, where applicable;
 - (ii) when issuing findings related to failures to comply with the group-wide AML/CFT policies and procedures, where applicable;
 - (iii) when carrying out on-site inspections;
 - (iv) the ML/TF risk profile;
- (b) the conduction of (joint) on-site inspections in another Member State;
- (c) the examination of suspected, attempted or committed breaches of AML/CFT obligations or shortcomings in the internal governance arrangements;
- (d) sanctions or measures imposed, for example when considering the impact of sanctions for breaches of AML/CFT obligations; and
- (e) emerging or crystallised ML/TF risks.

Guideline 10: Procedures for requesting and providing mutual assistance

10.1 Permanent members and observers to the extent foreseen in their terms of participation annexed to the AML/CFT cooperation agreement may request mutual assistance, including supervisory cooperation and the exchange of information, from other permanent members and, to the extent foreseen in the terms of participation annexed to the AML/CFT cooperation agreement, observers.



- 10.2 The requesting permanent member should submit its request in writing to the other permanent members (or observers) and send a copy of that request to the lead supervisor within 3 working days of the day that the requesting permanent member (or observer) sent the request.
- 10.3 The request should set out which information or type of mutual assistance is requested and the reason for the request. In exceptional circumstances where an oral request is made, it should be followed up with a written confirmation as soon as practicable.
- 10.4 When receiving a request for mutual assistance from a permanent member or an observer, the requested permanent member should provide the assistance required, including information about its ML/TF risk assessment, without undue delay and in a comprehensive fashion. Should the requested permanent member refuse to act on a request for assistance, it should explain its reasons for so doing and, wherever possible, highlight alternative ways to obtain the assistance requested.
- 10.5 Where information is not available in the language specified in the written cooperation and information-sharing agreement, the requested member should consider providing a summary in the language of the college.

Guideline 11: Confidentiality restrictions and permissible uses of information

Non-public information

- 11.1 All permanent members in an AML/CFT college should keep any non-public information obtained in that college confidential. Non-public information includes requests for mutual assistance.
- 11.2 Where a permanent member receives a request for mutual assistance from a competent authority that is not a permanent member or observer in that AML/CFT college, and responding to that request would necessitate the disclosure of non-public information obtained in the AML/CFT college context, the permanent member who received the request should:
- (a) consult with those permanent members or observers from which the information that is subject to the disclosure request originated and with the lead supervisor;
 - (b) refrain from disclosing non-public information unless it has obtained the written agreement from the permanent members and/or observers from which the non-public information originated;



- (c) refrain from disclosing, to the extent permitted, non-public information if the permanent members and/or observers from which the information originated consider that disclosure is not warranted. In those cases, the requested permanent member should ask the requesting competent authority to consider withdrawing its request for mutual assistance or amend it in such a way as to eliminate the need for the disclosure of non-public information.

11.3 Where the transmission of confidential information obtained in the AML/CFT college to an invited participant is permissible under the applicable law and such transmission is proposed, the lead supervisor should obtain explicit prior consent from the permanent members or observers that provided such information to the AML/CFT college. Where the applicable law requires that such transmission can only be made if the invited participant is subject to a specific professional secrecy requirement, the lead supervisor should assess whether the requirement is met and attach the assessment to the request for prior consent referred to in the first sentence of this paragraph. The invited participants should sign a confidentiality agreement that ensures that any confidential information discussed at the college meeting may not be disclosed to any person or entity outside the AML/CFT college unless required and permitted by law.

11.4 The lead supervisor should ensure that confidential information is always exchanged within the AML/CFT college through secure channels, unless such information is exchanged during the college meeting.

11.5 The exchange of information between the lead supervisor, permanent members and observers has to be in compliance with the applicable laws governing data protection.⁶

Permissible uses of information

11.6 Permanent members should use the information obtained in the AML/CFT college, without prior consent, for the purposes set out in Article 57a of Directive (EU) 2015/849 and particularly in order to:

- (a) ensure that the firm operating on a cross-border basis or EU establishments comply with the provisions of Directive (EU) 2015/849; or
- (b) inform their ML/FT risk assessment of the sector.

11.7 If a permanent member decides to disclose the information obtained in the AML/CFT college for any purpose other than those set out in Directive (EU) 2015/849 or specified in these

⁶ For national authorities Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and national implementing laws of this Regulation, and for the Union institutions bodies, offices and agencies Regulation (EU) 2018/1725. of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the institutions, bodies, offices and agencies of the Union and to the freedom circulation of this data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002 / EC.



guidelines, it should obtain prior written consent from the permanent members or observers from which the information originated or that may be affected by the information disclosure.

Guideline 12: Common approach

- 12.1 Permanent members should agree on a common approach to ensure that the firm operating on a cross-border basis and its cross-border establishments or EU establishments comply with the provisions of Directive (EU) 2015/849 and are supervised consistently in all jurisdictions.
- 12.2 In certain circumstances, two or more permanent members may agree on a common approach. For example:
- (a) where an issue relates only to a cross-border or EU establishment in one Member State, it may be sufficient for the permanent member responsible for the supervision of that establishment and the lead supervisor to agree on the common approach; or
 - (b) where an issue relates to the firm's or cross-border or EU establishment's application of group-wide policies and procedures, an agreement on the common approach between all permanent members may be more appropriate.
- 12.3 Where permanent members agree that a common approach is needed to resolve the issue but an agreement cannot be reached on how it should be applied, the lead supervisor's decision prevails.
- 12.4 Permanent members should commit to applying the approach described in Guidelines 12.1 and 12.2 in practice where this approach does not prejudice the powers and obligations conferred to them by virtue of their respective national laws.
- 12.5 Where a permanent member has agreed to follow the common approach and fails to act in accordance with the approach, other permanent members should contact the responsible European supervisory authority.

Guideline 13: Coordinated supervisory action(s)

- 13.1 The common approach described in Guideline 12 can lead to a coordinated supervisory action, which may include coordinated or joint inspections by some or all permanent members. When deciding whether to carry out a coordinated supervisory action, permanent members should have regard to:
- (a) the nature and level of the ML/TF risk that the joint action is designed to assess or mitigate;



- (b) the specific risks or legal or regulatory provisions that form the subject matter of coordinated action, and any differences in the applicable legal and regulatory framework;
- (c) the supervisory resources available and the planned allocation of supervisory resources.

13.2 If a coordinated action is agreed on, participating permanent members should set out in writing at a minimum:

- (a) the permanent member that is responsible for coordinating an action, if necessary;
- (b) an action plan, including the nature and type of coordinated action to be taken by each permanent member, the timing of the work to be undertaken by each permanent member and the modalities of information exchange, including the sharing of information gathered during, and as a result of, the coordinated action;
- (c) the options for coordinated follow-up, if any, including, where applicable, coordinated enforcement action.

Guideline 14: Bilateral relationships

14.1 In order to structure their relationships where an AML/CFT college has not been established, competent authorities should apply processes that facilitate effective and efficient cooperation and information exchange with other competent authorities, supervisory authorities from third countries where feasible and prudential supervisors through bilateral relationships. To that effect, competent authorities should apply where appropriate the provisions set out in:

- (a) Guideline 9 in relation to the scope of mutual assistance;
- (b) Guideline 10 in relation to the process of mutual assistance;
- (c) Guideline 11 in relation to the permissible uses of information; and
- (d) Guidelines 12 and 13 in relation to a common approach and coordinated supervisory actions.

14.2 Where, in accordance with Article 57a(2) of Directive (EU) 2015/849, the competent authorities have signed an agreement with the European Central Bank, they should also refer to that agreement for practical modalities of cooperation and exchange of information between them.



Guideline 15: Conflict resolution

- 15.1 Any conflict, arising from the application of these guidelines, between permanent members and observers, including where an AML/CFT college is not established or a request for mutual assistance has been declined or not fully satisfied, should be referred to the European supervisory authorities by all competent authorities involved.

Guideline 16: Transitional period

- 16.1 The lead supervisor should make every effort to establish as soon as possible an AML/CFT college for all firms, cross-border and EU establishments that meet the conditions set out in Guideline 2. It should first establish colleges for those firms assessed as high risk for ML/TF purposes in line with the Risk-Based Supervision Guidelines and ensure that colleges for all other eligible firms be established within 2 years of the date of application of these guidelines.
- 16.2 During this transitional period, competent authorities should inform the EBA of any issues encountered in the application of these guidelines.



Annex I – Mapping templates

[this template should be used when mapping firms with cross-border establishments, which are authorised in your Member State and which have cross-border establishments in other Member States]

Name of the firm	Type of firm	ML/TF risk rating	Legal identifier, if relevant	Member State or a third country where a firm is operating a cross-border establishment	Type of cross-border establishment	Does the firm require an AML/CFT college?

[this template should be used when mapping cross-border establishments, which operate in the Member State, of a firm established in another Member State]

Name of the cross-border establishment operating in the Member State	Type of firm	ML/TF risk rating of the cross-border establishment	Legal identifier, if relevant	Member State where the head office is located	How the firm is operating in your Member State (a branch, a subsidiary, etc.)	Does the EU cross-border establishment require an AML/CFT college?	Where the AML/CFT college is required, record the name and location of the lead supervisor



[This template should be used when mapping EU establishments of third-country undertakings, which operate in the Member State.]

Name of the EU establishment	Type of firm	ML/TF risk rating of the EU establishment	Legal identifier, if relevant	Name of the third-country undertaking	Country where the third-country undertaking's head office is located	How the EU establishment is operating in your Member State (a branch, subsidiary, etc.)	Other EU establishments related to the same third-country undertaking	Total value of assets of the EU establishment operating in your Member State	The level of ML/TF risk associated with the EU establishment in your Member State	Does the EU establishment operating in your Member State require an AML/CFT college?	Where the AML/CFT college is required, record the name and location of the lead supervisor

Annex II – AML/CFT cooperation agreement template

AML/CFT cooperation and information-sharing agreement (the ‘agreement’)

of the supervisory AML/CFT college (the ‘AML/CFT college’)

established for *[Record the name of the firm operating on a cross-border basis or the EU establishment]* (the ‘firm’)

i. Introduction

[Record the name of the competent authority] as the lead supervisor (the ‘lead supervisor’) has established this AML/CFT college in accordance with Articles 48(4), 48(5), 49, 50(a) and 57(a) of Directive (EU) 2015/849. The lead supervisor in its ML/TF risk assessment has classified the firm as *[record the ML/TF risk rating]* for ML/TF risk purposes.

The purpose of this AML college is to ensure the cooperation of, and information exchange between, the permanent members and observers identified in section II of this agreement.

This AML college will operate in line with this agreement, which will be reviewed and updated regularly according to the rules set out in the ESAs’ guidelines on the cooperation and information exchange for the purposes of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (the ‘AML/CFT Colleges Guidelines’).

ii. Identification of permanent members and observers

a. Description and structure of the firm

[Please insert a structure chart and/or a short description of the firm. A detailed description of the firm should be enclosed in Appendix I to this agreement.]

b. Identification of permanent members

As a result of the mapping exercise carried out by the lead supervisor and in line with Guideline 5 of the AML Colleges Guidelines, the lead supervisor has identified the following permanent members who are required to participate in the AML college:

[Insert a list of all permanent members]

Contact details of all permanent members are enclosed in Appendix II attached to this agreement.



c. Identification of observers

The lead supervisor has carried out a mapping exercise and, in line with Guideline 5 of the AML Colleges Guidelines, has identified observers for the AML college. After receiving a confirmation from the observers that they will abide by the Terms of the Participation of observers enclosed in the Appendix III to this agreement, the lead supervisor has invited the following observers to participate in the AML college:

[Insert a list of all observers]

The lead supervisor considers that these observers have a particular interest in the matters related to the firm, which will be discussed at the AML/CFT college meetings, including:

[Include a list of topics]

[Record the name of the supervisory authority] is a third-country supervisory authority that has been invited to participate in the AML college as an observer because *[In relation to sections a) or b) below, please delete the section that is not relevant]*

- a) the lead supervisor considers the confidentiality regime of the supervisory authority in the third country to be equivalent to that of the competent authorities;
- or**
- b) the lead supervisor considers the confidentiality regime of the supervisory authority in the third country not to be equivalent to that of the competent authorities and therefore limits the observer's participation to the following sessions where no confidential information is disclosed:

[Include a list of sessions]

[Include the following condition only where the permanent members have agreed that observers should attend only particular sessions of the college meeting]

iii. Participation in the AML college meetings

The lead supervisor and permanent members of the AML college will ensure that the most appropriate representatives participate in the college meetings and activities, based on the topics to be discussed and objectives to be pursued.

Those representatives will have the power to commit their authorities as permanent members, to the maximum extent possible for the decisions planned to be taken during the AML college meetings or activities.



The lead supervisor, in consultation with permanent members, will invite other participants to attend a particular session of the AML college meeting in accordance with Guideline 5 of the AML Colleges Guidelines, where necessary.

iv. Scope and framework for requesting mutual assistance

Permanent members will follow the process for requesting and providing mutual assistance set out in the AML Colleges Guidelines.

Permanent members will provide the fullest mutual assistance to other permanent members and observers, where feasible, in any matters relevant to the AML/CFT supervision of the firm and at least in matters described in the AML Colleges Guidelines.

vii. Treatment of confidential information

In accordance with Article 48(2) of Directive (EU) 2015/849, all permanent members will treat the information received under this agreement and in the context of the AML college as confidential and in compliance with applicable data protection rules.

Permanent members will use the confidential information received in the context of the AML college only in the course of their duties and only for the purposes specified in the AML Colleges Guidelines.

The permanent members will disclose the information obtained as part of the AML college to parties other than permanent members and observers, where appropriate, only in a manner described in the AML Colleges Guidelines.

viii. Common approach and coordinated action

Permanent members will refer to the AML Colleges Guidelines when agreeing on a common approach or coordinated actions.

The lead supervisor will take all necessary steps to ensure the application of a common approach when agreed between two or more permanent members, where it does not prejudice the powers and obligations conferred to these members by virtue of their respective national laws.

ix. Conflict resolution

Any conflicts between permanent members and observers, where relevant, will be resolved in accordance with the AML Colleges Guidelines.



x. Final provisions for the written coordination and cooperation arrangements

Permanent members will honour the arrangements laid down in this agreement.

In case of discontinuation of membership by a permanent member or an observer, the lead supervisor, in consultation with permanent members, will revise this agreement accordingly.

The language of communication within the AML college is *[name the language]*. This document should not be published.

Date:
 On behalf of the *[lead supervisor]*
 Name:
 Position:
 Signature:.....

Date:
 On behalf of *[Competent authority]*
 Name:.....
 Position:.....
 Signature:.....

Appendix I – The firm’s structure

[include here a detailed description of the firm’s structure or the organisational chart]

Appendix II – Contact list

Last updated:				
Status	Authority	Contact details	Phone number	Email address
<i>[record whether permanent member or observer]</i>	<i>[record the name of the competent/supervisory authority or ESAs]</i>	<i>[record the name and job title of the contact person at the authority]</i>	<i>[record the contact person’s phone number]</i>	<i>[record the contact person’s email address]</i>

Appendix III – Individual Terms of the Participation of observers

[The Terms of Participation, which will be concluded by permanent members with the individual observers, should become annexes of the cooperation and information-sharing agreement, i.e. Appendices III.1, III.2, etc., depending on the number of observers in the college. For each observer there should be individual Terms of Participation defining its involvement in the AML college activities and its interactions with permanent



members and other observers in the context of the AML college (unless agreed otherwise by the college members and the observers).]

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JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES