



Draft AML/CFT Cooperation Guidelines

Public hearing

7 July 2021

Overview



Agenda

EBA presentation

- Background and legal basis
- Basic guiding principles
- Overview of draft guidelines
- Questions for consultation
- Timeline and next steps

Questions and comments from participants

House keeping rules

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 - write your question / comment in Webex chat (make sure you send it to 'everyone', not 'privately'), or
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- Whenever intervening please identify yourself by providing:
 - your full name (unless already used on Webex)
 - name of your organisation
- In case of technical issues, kindly contact Aurel Damian
 - via the private chat function in Webex; or
 - email (EBA-LearningHub@eba.europa.eu)

Background and legal basis (1)

CRD Article 117

Cooperation obligation

5. Competent authorities, financial intelligence units and authorities entrusted with the public duty of supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive, shall **cooperate closely** with each other **within their respective competences** and shall **provide each other with information relevant for their respective tasks** under this Directive, Regulation (EU) No 575/2013 and under Directive (EU) 2015/849,

provided that such cooperation and information exchange **do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law** of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 is located. (...)

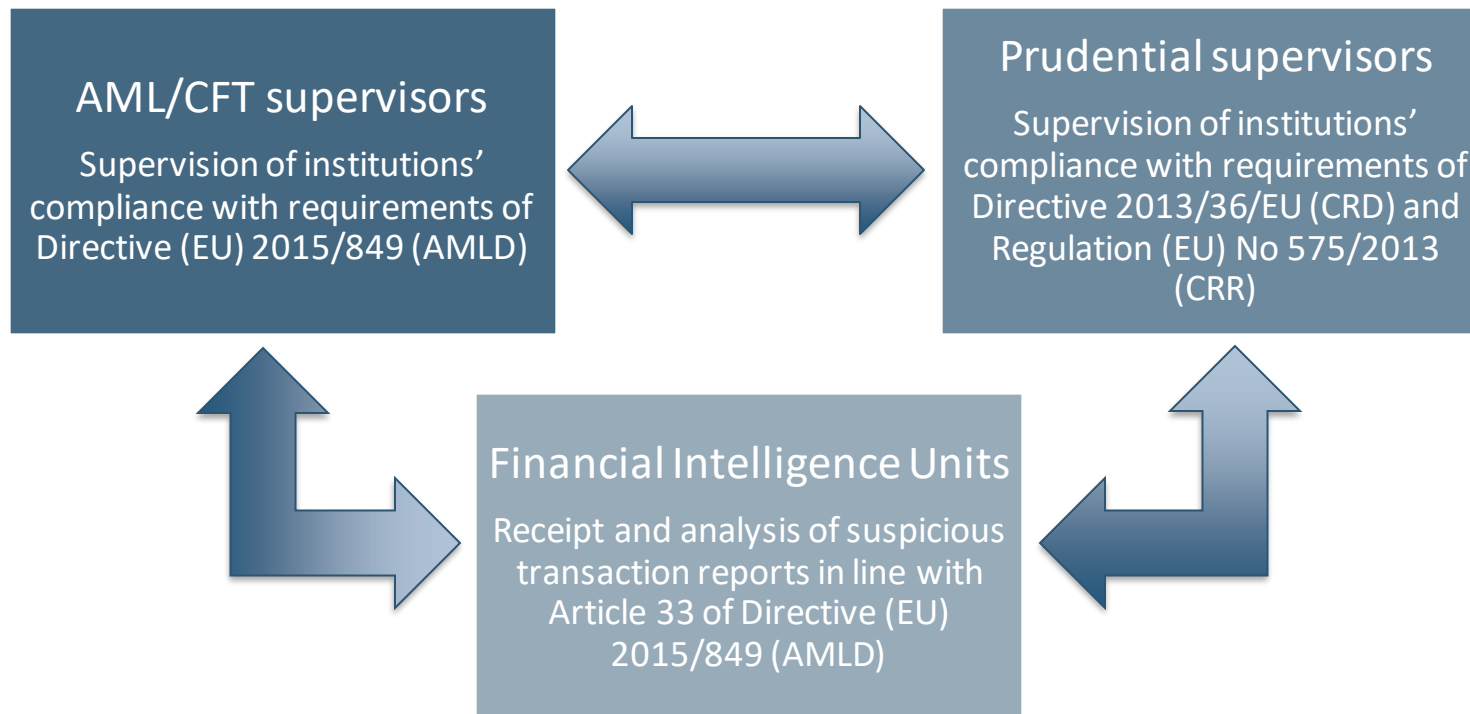
Mandate guidelines

6. (...) EBA shall issue **guidelines**, in accordance with Article 16 of Regulation (EU) No 1093/2010, **specifying the manner for cooperation and information exchange** between the authorities referred to in paragraph 5 of this Article, particularly in relation to **cross-border groups** and in the context of identifying **serious breaches of anti-money laundering rules**.

Council AML Action Plan – Objective 4

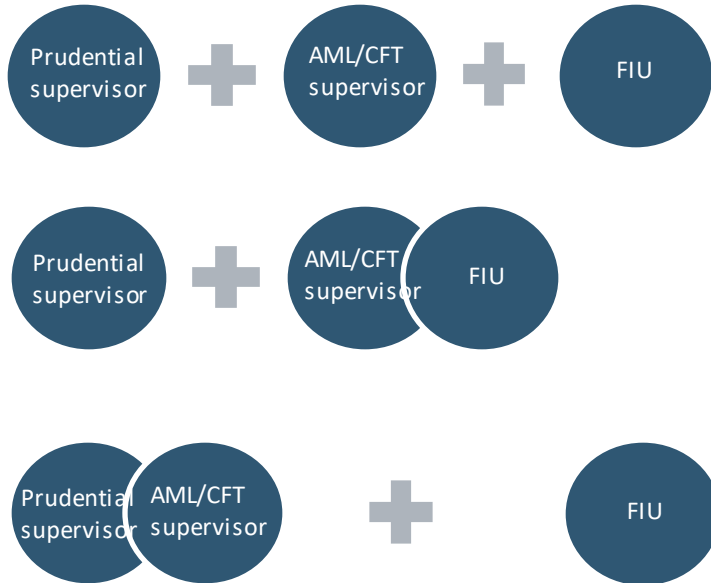
Prudential and AML/CFT supervisors and ESAs to **ensure effective cooperation** between prudential supervisors and AML/CFT supervisors

Background and legal basis (2)

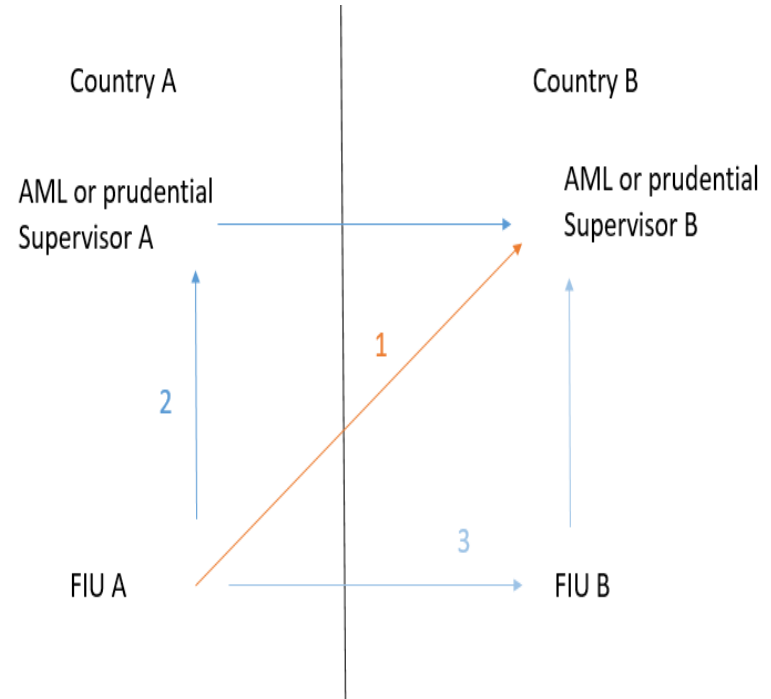


Background and legal basis (3)

Institutional arrangements



Cross-border exchange: diagonal vs FIU-to-FIU



Basic guiding principles

- ✓ Guidelines focus on the modalities for cooperation and information exchange between prudential supervisors, AML/CFT supervisors and FIUs while **respecting the autonomy of the respective roles, tasks and competencies**.
- ✓ Guidelines provide for cooperation and information exchange to take place **throughout the supervisory process**.
- ✓ Guidelines are **neutral as to how AML/CFT supervision and prudential supervision are organised** (i.e. in one integrated authority combining prudential and AML/CFT supervision or separate authorities).
- ✓ Guidelines are **neutral as to how FIUs are organised** (i.e. in one integrated authority combining the FIU and AML/CFT supervisory functions or in separate authorities).
- ✓ Guidelines are structured to ensure a **smooth interplay with existing cooperation arrangements**, including the multilateral agreement between the ECB and the AML/CFT supervisors, and including AML/CFT and prudential colleges.
- ✓ Guidelines are **aligned to related relevant regulatory instruments** (e.g. Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders).

Overview of the draft Cooperation Guidelines (1)

General provisions

- Cooperation and information exchange to be organised in an **efficient and effective manner**:
 - domestic level & cross-border context
 - **regardless of the specific institutional arrangements** of the respective functions in each Member State
- Information to be exchanged that is **gathered or created in the exercise of the authorities' tasks** & that is **relevant for the exercise of the other authorities' tasks**:
 - on own initiative & on request
 - without undue delay/by requested date
- Cooperation within respective competencies **to the fullest extent possible** provided it does not impinge on an ongoing inquiry, investigation or proceedings (CRD Art. 117(5))

Overview of the draft Cooperation Guidelines (2)

Practical modalities for cooperation and information exchange

Effective and efficient means for cooperation and information exchange to be in place

- Secure channels for confidential information exchange
- Information exchange in writing (initial communication can be verbally where deemed necessary)
- For integrated authorities alternative processes can be put in place ensuring same degree of information exchange and cooperation

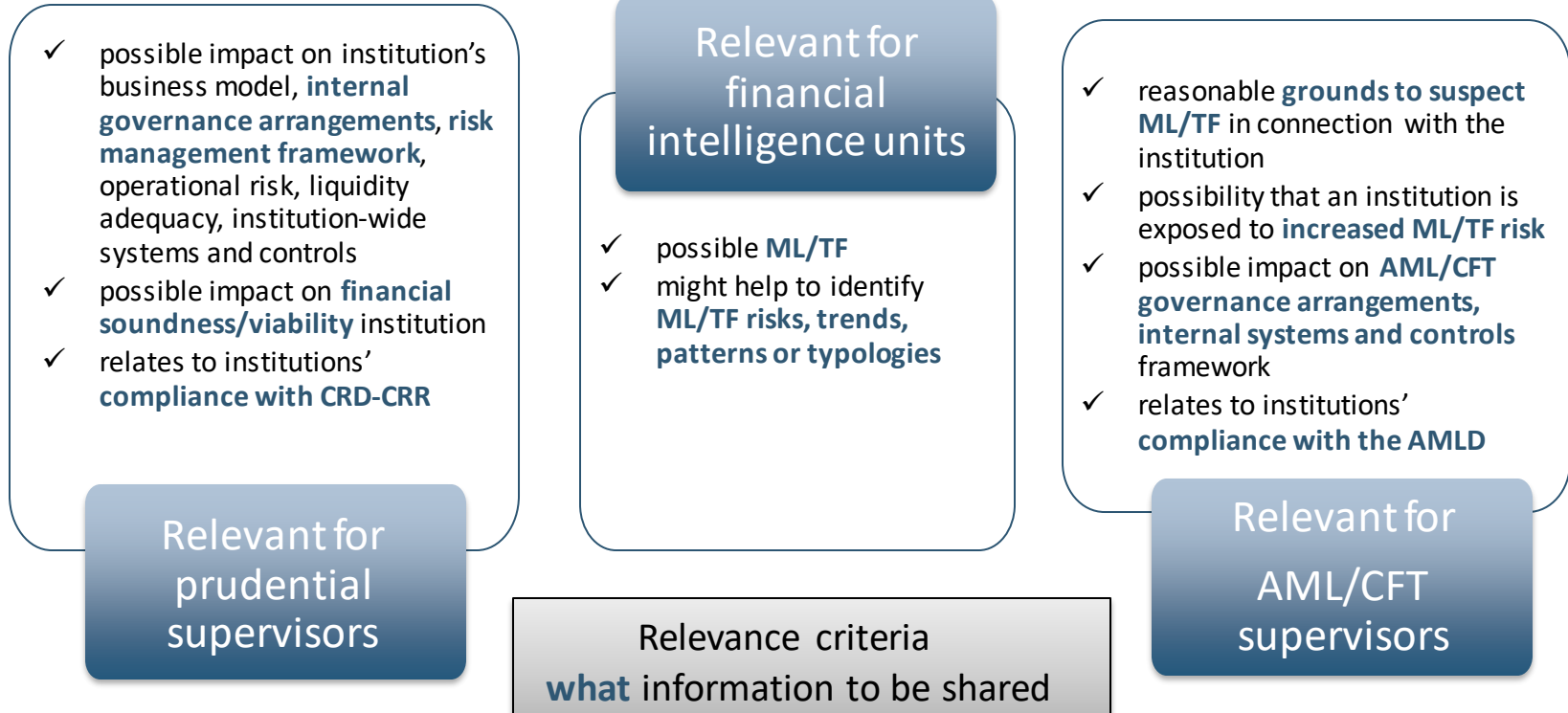
▪ **Relevance criteria**

- **what** information to be exchanged
- with **which** supervisor

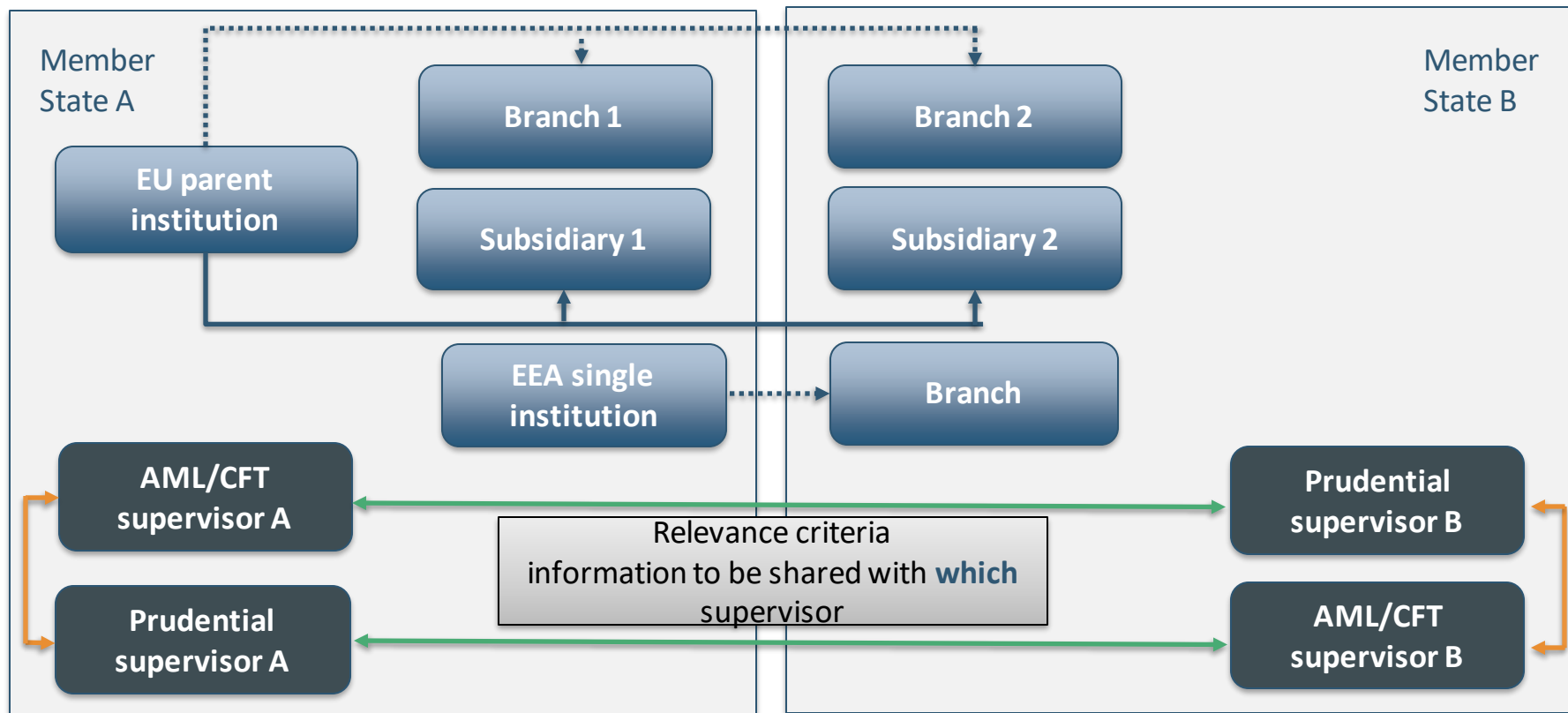
▪ **Modalities for cooperation and for information sharing**

- including possible set-up regular information exchange

Overview of the draft Cooperation Guidelines (3)



Overview of the draft Cooperation Guidelines (4)



Overview of the draft Cooperation Guidelines (5)

Confidentiality restrictions and permissible uses of information

- Exchange of confidential information through **secure channels**
- **Information received to be kept confidential** and used or disclosed only as permitted by applicable laws
- **Prior consent** should be observed where required in accordance with applicable laws.
- Cooperation and information exchange to be performed **in compliance with applicable data protection laws**

Overview of the draft Cooperation Guidelines (6)

Application of authorisations of institutions

Assessment

Prudential supervisors to exchange information with AML/CFT supervisor

Increased ML/TF risk

Prudential supervisor to seek information from FIU where appropriate

Negative decision on grounds of ML/TF risks

Prudential supervisor to share with AML/CFT supervisor & FIU

Proposed acquisitions or increases of qualifying holdings

Assessment

Prudential supervisors to exchange information with AML/CFT supervisor where deemed necessary

Increased ML/TF risk

Prudential supervisor to seek information from FIU where appropriate

Negative decision on grounds of ML/TF risks

Prudential supervisor to share with AML/CFT supervisor & FIU

Suitability of members of the management body and key function holders

Assessment

Prudential supervisors to exchange information with AML/CFT supervisor where deemed necessary

Increased ML/TF risk

Prudential supervisor to seek information from FIU where appropriate

Negative decision on grounds of ML/TF risks

Prudential supervisor to share with AML/CFT supervisor & FIU

Overview of the draft Cooperation Guidelines (7)

Withdrawal of authorisations of institutions

Withdrawal procedure on grounds of serious breaches of AML/CFT laws

- AML/CFT supervisor to notify prudential supervisor on identified serious breaches & related decisions/measures
- Prudential supervisor to inform AML/CFT supervisor on decision to initiate withdrawal of authorisation

Withdrawal decision on grounds of serious breaches

Prudential supervisor to inform AML/CFT supervisor & FIU

Merger applications

Assessment

Prudential supervisors to exchange information with AML/CFT supervisor

- For merger giving rise to **proposed acquisition or increase in qualifying holdings** also interaction with FIU as needed
- For merger resulting in **formation of a new institution** also interaction with FIU as needed

Monitoring of outsourcing arrangements

Monitoring

Prudential supervisors to exchange information with AML/CFT supervisor if there are reasonable grounds to suspect that the **outsourcing arrangements could impact**

- The **ML/TF risk exposure** of the institution; or
- Its **continuing compliance with its obligations under AMLD-CRD**

Overview of the draft Cooperation Guidelines (8)

On- and off-site supervision and risk assessments

- Prudential supervisors → AML/CFT supervisors
Information relevant for ML/TF risk assessment and supervision
- AML/CFT supervisors → prudential supervisors
Information relevant for prudential risk assessment (SREP) and supervision
- AML/CFT-prudential supervisors → FIUs
Information relevant for tasks FIUs in relation to suspicious transaction reporting framework, ML/TF risks

Common assessment under CRD Article 97(6)

- If based on supervisory review prudential supervisor has **reasonable grounds to suspect** ML/TF in connection with an institution or increased ML/TF risk
→ notify AML/CFT supervisor and EBA of findings and concerns
 - If AML/CFT supervisor assesses institution is **potentially exposed** to increased ML/TF risk
→ notify **common assessment** prudential supervisor and AML/CFT supervisor to EBA (including measures as appropriate)

Overview of the draft Cooperation Guidelines (9)

Identify areas of mutual interest

Prudential and AML/CFT supervisors consider identifying areas of mutual interest when planning their on-site and off-site supervisory activities

Consider most appropriate form of cooperation

- Consider most appropriate form of cooperation
- Mutual attendance of meetings
 - Mutual participation in thematic reviews
 - Mutual participation in off-site reviews or on-site inspections

Set up coordinated supervisory activity

& Agree on modalities for the cooperation, information exchange and follow-up (timing, allocation of resources, etc.)

Overview of the draft Cooperation Guidelines (10)

Cooperation and information exchange regarding supervisory measures and sanctions

- **Information exchange between prudential supervisors and AML/CFT supervisors**
 - on **pending/imposed** supervisory measures or sanctions relevant for their respective supervisory tasks
 - **as early as possible** in the enforcement process
 - detailing **nature and extent of underlying deficiencies**, material weaknesses and serious breaches
 - allowing the
 - prudential supervisor to **consider the potential prudential implications** and
 - AML/CFT supervisor to consider the potential implications on the institutions' AML/CFT systems and controls framework

Questions for consultation

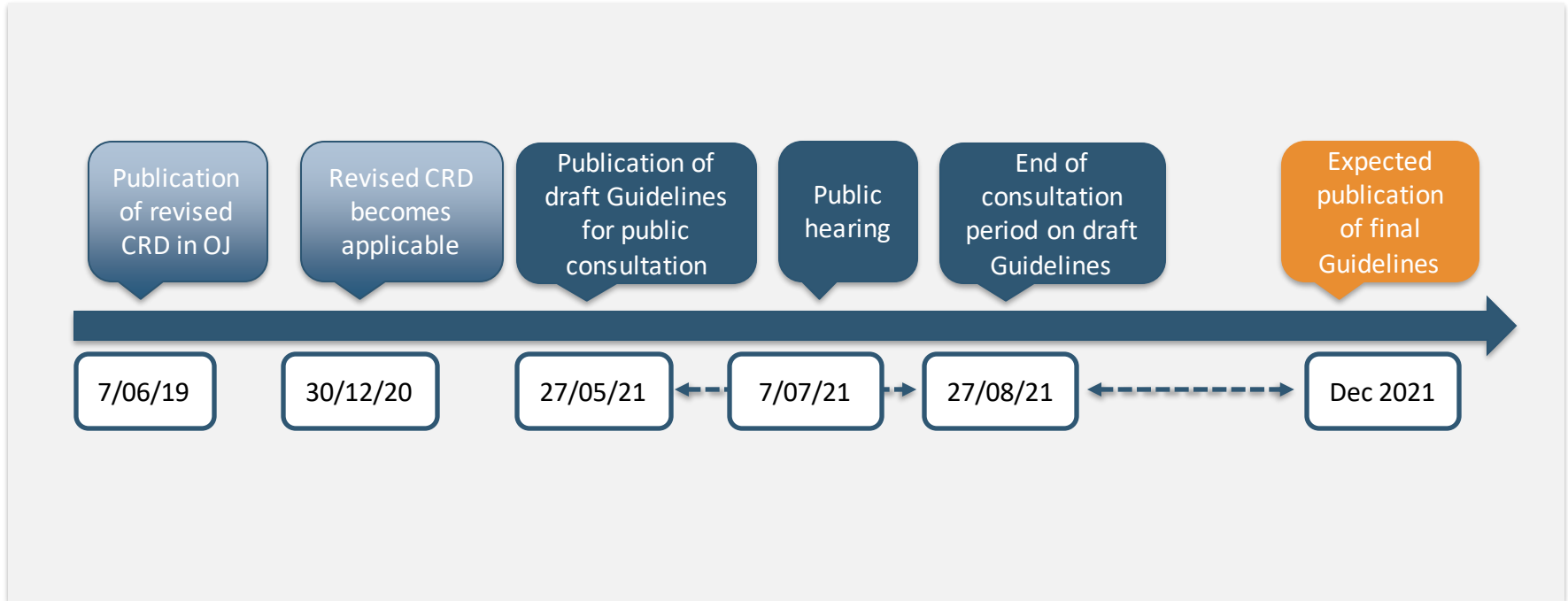
- Do you consider that the **subject matter, scope of application**, and **definitions** are appropriate and sufficiently clear?
- Do you consider that the **general provisions** are appropriate and sufficiently clear?
- Do you consider that the **mechanisms for cooperation, information exchange** and **confidentiality treatment** are appropriate and sufficiently clear?
- Do you consider that the provisions on cooperation and information exchange in the context of the processes for **authorization, proposed acquisitions of qualifying holdings, suitability assessments, and withdrawal of authorization** are appropriate and sufficiently clear?
- Do you consider that the provisions on cooperation and information exchange in **ongoing supervision** are appropriate and sufficiently clear?
- Do you consider that the provisions on cooperation and information exchange regarding **supervisory measures and sanctions** are appropriate and sufficiently clear?

<https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-counteracting-financing-terrorism/guidelines-cooperation-and-information-exchange-between-prudential-supervisors-amlcft-supervisors>

Send your
comments
by 27 August



Timelines and next steps



Questions and comments from participants

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EUROPEAN BANKING AUTHORITY

Tour Europlaza, 20 avenue André Prothin, CS 30154
92927 Paris La Défense CEDEX, FRANCE

Tel: +33 1 86 52 70 00

E-mail: info@eba.europa.eu

<https://eba.europa.eu/>