

# ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM

FEBRUARY 2020

## What is AML/CFT and why is it so important?

Money laundering and terrorist financing (ML/TF) harm society in a number of ways. Money laundering facilitates and perpetuates crime and supports criminals. Terrorist financing facilitates the commitment of atrocities at home and abroad. Together, they undermine the trust of citizens in financial institutions, negatively affect market integrity and threaten the stability of the financial system.

ML/TF cannot be fought in isolation. Governments, public authorities and the private sector all have a role to play. Since its inception, the EBA has been working to foster a common approach by national competent authorities and financial institutions across the single market to anti-money laundering and countering the financing of terrorism (AML/CFT), and to equip them to apply this approach effectively. A common approach is important, because financial crime respects no borders and a weakness in one area of the single market opens up the entire single market to abuse.

The high-profile scandals of the last few years have shown that, collectively, we must strengthen Europe's AML/CFT defences. This is why the European legislature gave the EBA new powers to lead, coordinate and monitor EU supervisors' fight against ML/TF. It also gave us a new objective, to prevent the use of the financial system for the purposes of money laundering and terrorist financing.

We will use all of our powers and functions to fulfil our AML/CFT objective. We will lead the development of EU-wide AML/CFT policies and standards within our mandate, monitor risks to the integrity of the single market and coordinate supervisory actions at Union level to ensure that financial institutions apply effective and robust AML/CFT controls wherever they operate in the single market. We aim to make a real difference in the fight against financial crime.

## What is changing in the approach to AML/CFT?



The EBA, with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), has led the development of AML/CFT policy for competent authorities and financial institutions in the EU. A series of joint AML/CFT standards, guidelines and opinions has transformed the way competent authorities and financial institutions approach AML/CFT.

In 2019, the European legislature consolidated the AML/CFT mandates of all three European supervisory authorities within the EBA. It also gave the EBA a clear legal duty to contribute to preventing the use of the financial system for the purposes of money laundering and terrorist financing (ML/TF) and to lead, coordinate and monitor the AML/CFT efforts of all EU financial services providers and competent authorities. The law implementing these powers and this mandate came into effect on 1 January 2020.

Although important, these changes constitute an evolutionary, not revolutionary, step in the EU's approach to AML/CFT, which remains based on a minimum harmonisation directive and an associated strong focus on national law and direct supervision of financial institutions by national competent authorities. This reduces the degree of convergence and consistency the EBA's work can achieve. To the extent that this is possible under the EU's continuing minimum harmonisation framework, we will use our new powers to:

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**LEAD** the establishment of AML/CFT policy and support its effective implementation by competent authorities and financial institutions across the European Union with a view to fostering an effective risk-based approach to AML/CFT with consistent outcomes;
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**COORDINATE** across the EU and beyond by fostering effective cooperation and information exchange between all relevant authorities in a way that supports the development of a common understanding of ML/TF risks, strengthens risk-based AML/CFT supervision, ensures that emerging risks are dealt with promptly across the single market and ensures effective oversight of cross border financial institutions;
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**MONITOR** the implementation of EU AML/CFT standards to identify vulnerabilities in competent authorities' approaches to AML/CFT supervision and to take steps to mitigate them before ML/TF risks materialise.

The EBA will report on progress made and keep this approach under review as discussions on the future of AML/CFT in Europe progress.

## What has the EBA done until now on AML/CFT?

The EBA, ESMA and EIOPA have since their inception been responsible for fostering the consistent and effective implementation, by national competent authorities, of the EU’s AML/CFT legislation. Together, we have led the development of AML/CFT policy, supported its implementation and fostered cooperation between competent authorities across the single market.

### Policy development

The European Supervisory Authorities (ESAs) have led the development of EU AML/CFT policy for national competent authorities and financial institutions.

Since Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the AMLD) came into force, the ESAs have issued two draft regulatory

technical standards, four guidelines and four opinions. These regulatory products have changed the way competent authorities and financial institutions approach AML/CFT and paved the way for a more consistent and effective application of the AMLD.

Through joint guidelines, the ESAs introduced a common understanding of the risk-based approach to AML/CFT and how it should be applied by financial institutions and competent authorities, and complemented this through work on key, practical aspects of AML/CFT supervision and compliance where relevant. For example, we published specific, hands-on opinions when we found that financial institutions were reluctant to onboard asylum seekers from high-risk jurisdictions for fear of regulatory censure, and in order to take the fear out of innovative solutions in the AML/CFT compliance context. A full list of our regulatory products is on our [website](#).

## EBA strategic objectives on AML/CFT



### LEAD

- Review implementation
- Develop policies
- Carry out risk assessments



### COORDINATE

- Facilitate information flows and build an AML/CFT database
- Set supervisory priorities
- Liaise with Financial Intelligence Units and third country authorities
- Support AML/CFT colleges



### MONITOR

- Request investigations of financial institutions
- Request sanctions for financial institutions
- Consider Breach of Union Law investigations

## Implementation and convergence

The EBA has supported the implementation of policy products and standards to foster the development of comparable and joined-up approaches by competent authorities to AML/CFT supervision, and to achieve consistent and effective outcomes in the implementation of the risk-based approach to AML/CFT. We supported implementation through training and by identifying, assessing and disseminating information on EU-wide ML/TF risks, notably through the Joint Opinion on ML/TF risks, which we publish every 2 years. We also organised seminars to enhance competent authorities' understanding of ML/TF risks in specific sectors that are associated with higher ML/TF risk, including electronic money and money remittance.

More recently, we provided direct support to competent authorities in the context of our multi-annual, staff-led reviews of competent authorities' approaches to the AML/CFT supervision of banks.

Where we found serious shortcomings in competent authorities' approaches to the AML/CFT supervision of financial institutions, we carried out enquiries and in some cases opened formal investigations and where necessary issued recommendations, notably where we found a competent authority was in breach of Union law.



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## Cooperation

Over the last 2 years, we have worked to raise awareness, for example in our 2018 report on prudential supervisory colleges, which lists examples of good practice, and in our 2019 opinion on the consideration of ML/TF risks in the prudential context. We also developed specific tools to foster effective cooperation between competent authorities. These tools include an agreement that sets out the practical modalities for cooperation and information exchange between the European Central Bank in its capacity as prudential supervisor and all national AML/CFT supervisors, and, most recently, own-initiative guidelines on supervisory cooperation in the AML/CFT space. These guidelines establish a framework for cooperation of competent authorities that includes the setting up of AML/CFT colleges, a new concept that has already been identified as good practice by international standard setters and mirrors the work that we have done in ensuring prudential colleges of supervisors work well.

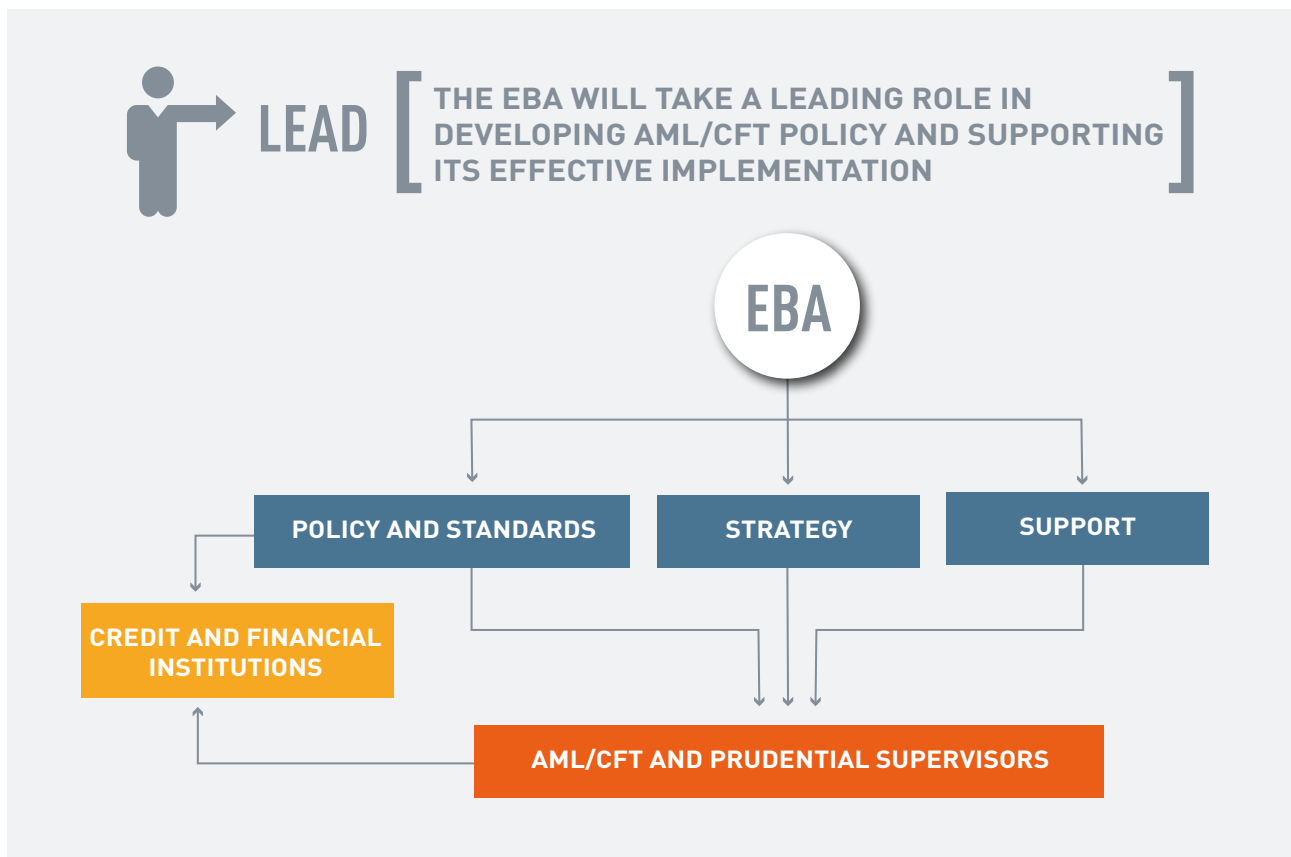
### A new mandate for 2020

In 2019, the European legislature consolidated the AML/CFT mandates of all three ESAs within the EBA. It also gave the EBA a clear legal duty to contribute to preventing the use of the financial system for the purposes of ML/TF and to lead, coordinate and monitor the AML/CFT efforts of all EU financial services providers and competent authorities. The law implementing these powers and mandate came into effect on 1 January 2020.

This means that the EBA is from now on solely responsible for leading, coordinating and monitoring AML/CFT efforts across the entire EU financial sector.



## How will the EBA 'lead' on AML/CFT?



“OUR OBJECTIVE IS TO TAKE A LEADING ROLE IN DEVELOPING AML/CFT POLICY AND IMPLEMENTATION”

Our objective is to take a leading role in developing AML/CFT policy within our mandate and supporting its effective implementation with a view to fostering a proportionate, risk-based approach to AML/CFT that is implemented consistently and effectively by competent authorities and financial institutions across the European Union.

We will lead by:

1) **Developing EU-wide AML/CFT policy and setting regulatory expectations** through standards, guidelines or opinions where this is provided for by EU legislation, and on our own initiative where we identify market failure, gaps in competent authorities' approaches to AML/CFT supervision, or a need for clarification.

Specifically, in 2020, we will be setting clear expectations of the components of an effective, risk-based approach to AML/CFT that financial institutions and competent authorities have to implement with targeted revisions to our core AML/CFT guidelines: the [Risk Factors Guidelines](#) and the [Risk-Based Supervision Guidelines](#).

2) **Fostering comparable approaches and the consistent and effective implementation of our AML/CFT policy and underlying EU AML/CFT legislation** by assisting competent authorities through training and bilateral support where necessary.

In 2020, we will continue our series of AML/CFT implementation reviews. We will provide detailed bilateral feedback to individual competent authorities on their approach to the AML/CFT su-

pervision of banks. We will also be publishing key overall findings from our reviews and associated recommendations that are relevant to all competent authorities.

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*The Authority shall [...] adopt measures to prevent and counter money laundering and terrorist financing [...]. Those measures shall include [...] developing common guidance and standards for preventing and countering money laundering and terrorist financing in the financial sector and promoting their consistent implementation in particular by developing draft regulatory and implementing technical standards [...], guidelines recommendations and other measures, including opinions.*

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Article 9a(1)(c) of the EBA Regulation

We will provide targeted training on issues that appear particularly challenging based on evidence from our implementation reviews, our own [work on ML/TF risks](#) and the Commission's Supranational Risk Assessment. In 2020, we will be providing training on risk-based AML/CFT supervision, AML/CFT risk assessments, the ML/TF risks associated with virtual assets.

We will also be launching a question-and-answer process specific to AML/CFT to support the consistent and effective practical application or implementation of our policy products.

**3) Identifying, assessing and disseminating information on EU-wide ML/TF risks and developing a common approach to mitigating these risks strategically.** We will continue to identify and monitor ML/TF risks through discussions with competent authorities and other stakeholders, through work to support the drafting of our new Opinion on ML/TF risks and through information obtained in the context of our work on a new EBA AML/CFT database under Article 9a of the EBA Regulation. We will disseminate information on those risks through the Opinion and targeted communications where appropriate.

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*The Authority shall, with the participation of the competent authorities, perform risk assessments of the strategies, capacities and resources of competent authorities to address the most important emerging risks related to money laundering and terrorist financing at Union level.*

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Article 9a(5) of the EBA Regulation

We will also work to address those risks through our policy work and our new risk assessments of competent authorities under Article 9a of the EBA Regulation, which are a new, diagnostic tool to test the ability of competent authorities to address strategic EU ML/TF risks.

In 2020, we will develop the methodology for the risk assessments under Article 9a of the EBA Regulation for a pilot exercise in 2021, drawing on information in our emerging AML/CFT database, the [ESAs' 2019 Joint Opinion on ML/TF risks](#) and the findings of the European Commission's biennial Supranational Risk Assessment, among other sources. We will publish the findings of our risk assessments and use these to inform our AML/CFT work generally. As part of this, we will consider how AML/CFT could feature in establishing Union strategic supervisory priorities in accordance with Article 29a of the EBA Regulation, issuing recommendations and providing bilateral technical assistance to competent authorities where necessary.

**4) Considering ML/TF risk as part of everything we do.** In this context, we look forward to building on our ongoing work on strengthening awareness of the impact ML/TF risks have on financial institutions' safety and soundness, to make certain that prudential and AML/CFT competent authorities are equipped to tackle ML/TF effectively in a joined-up way, and to ensure that the Union's financial sector becomes a truly hostile place for criminals.

We will do this by taking stock of prudential supervisors' treatment of ML/TF risks in the context of the supervisory review and evaluation process ([SREP](#)), and by assessing how our SREP guidelines should be amended to ensure a consistent approach to tackling ML/TF risks from the prudential perspective.

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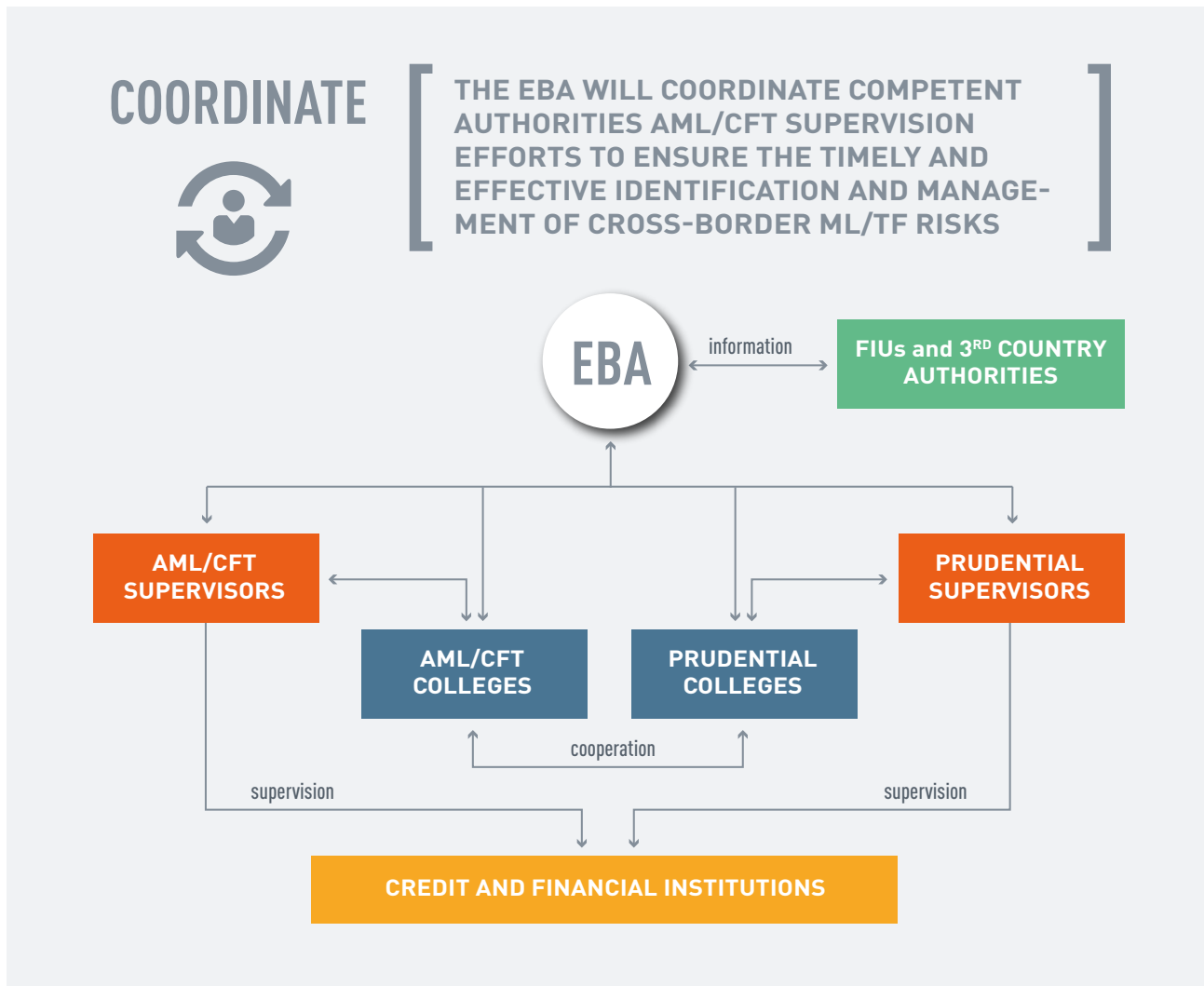
*The Authority shall, within its respective competences, contribute to [...] preventing the use of the financial system for the purposes of money laundering and terrorist financing.*

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Article 1(5) of the EBA Regulation

We will also draft regulatory technical standards under Article 8(2) of the Capital Requirements Directive to set out how competent authorities should address ML/TF risks when assessing applications for qualifying holdings and assess how to address ML/TF risks more explicitly across other areas of our work, such as governance and internal control, authorisation, financial innovation and loan origination.

## What will the EBA do to ‘coordinate’?



“OUR OBJECTIVE IS TO COORDINATE COMPETENT AUTHORITIES’ AML/CFT SUPERVISION BY FOSTERING EFFECTIVE COOPERATION AND INFORMATION EXCHANGE”

Our objective is to coordinate competent authorities’ AML/CFT supervision by fostering effective cooperation and information exchange between all relevant authorities in a way that supports the development of a common understanding of ML/TF risks, strengthens risk-based AML/CFT supervision, ensures that emerging risks are dealt with promptly across the single market and ensures effective oversight of cross-border financial institutions.

We will coordinate by:

- 1) **Establishing a permanent internal AML/CFT standing committee**, the AML/CFT Standing Committee (AMLSC). The AMLSC will bring together senior representatives of all AML/CFT competent authorities from Member States, along with representatives from ESMA and EIOPA, the Commission and the European Central Bank, among other observers. Its main task will be to provide subject matter expertise to inform the EBA’s work, and to pre-

pare decisions for the EBA's Board of Supervisors. It will also serve as a forum to facilitate information exchange and ensure effective coordination and cooperation to achieve consistent outcomes in the fight against financial crime in the single market. The AMLSC will meet for the first time in February 2020 and will elect its chair at its first meeting.

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*The Authority shall establish a permanent internal committee on anti-money-laundering and counter-terrorist financing to coordinate measures in order to prevent and counter the use of the financial system for the purpose of money laundering and terrorist financing.*

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Article 9a (7) of the EBA Regulation

**2) Working closely with ESMA and EIOPA** to draw on their subject matter expertise in respect of different sectors and business models, and in particular in situations where a decision might affect financial institutions or competent authorities within their remit.

**3) Creating a new AML/CFT database.** This database will contain both quantitative and qualitative data that we will analyse and use to (i) share information and inform competent authorities across the EU of emerging and priority risks; (ii) inform the EBA's AML/CFT policy and strategy, e.g. for Article 9a risk assessments, the scoping of training or prioritisation of policy work; (iii) drive our work on instigating investigations under Article 9b of the EBA Regulation. Not only will the database contain information on AML/CFT weaknesses in individual financial institutions and measures taken by competent authorities to correct those shortcomings as provided for in the EBA Regulation, but we will use it to meet wider AML/CFT information and data needs to support our statutory objectives and AML/CFT work.

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*[I]t is important that EBA collects all relevant information on weaknesses in relation to money laundering and terrorist financing activities identified by the relevant Union and national authorities [...]. EBA should store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information.*

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Recital 16 of the EBA Regulation

This should make data collection more streamlined and effective, and predictable for competent

authorities as key data providers. Importantly, we will draft two regulatory technical standards that will specify the core information that competent authorities must submit under the EBA Regulation, and how we will analyse this information and make it available to competent authorities.

**4) Fostering cooperation between AML/CFT competent authorities, and between AML/CFT competent authorities and prudential authorities.**

Following on from our work on supervisory cooperation and information exchange, we will support the establishment of AML/CFT colleges of supervisors in line with our 2019 guidelines on supervisory cooperation, and work with competent authorities to ensure that these colleges function effectively. By the end of 2020 and every year thereafter, we will publish a report on the functioning of AML/CFT colleges and set common priorities for the year ahead.

We will also work to ensure the effective flow of information between AML/CFT competent authorities and prudential authorities through our monitoring of prudential colleges, our priority setting for prudential colleges, which in 2020 will for the first time include a strategic AML/CFT objective, and regular soundings at the EBA's sub-committees. We will in 2020 look to formalise this exchange through work on guidelines for prudential competent authorities under Article 117(6) of the CRD.

**5) Cooperating with financial intelligence units (FIUs).**

Our new duty to cooperate with FIUs is an important complement to our work on fostering cooperation between AML/CFT competent authorities, and between AML/CFT and prudential authorities. We will examine how this cooperation can add value at an EU level to existing arrangements between AML/CFT authorities and FIUs at national level, and to the existing EU FIU platform. As a first step, we are working to establish an EU forum that brings together AML/CFT supervisors and FIUs in 2020, and we intend to draw on our extensive in-house expertise in negotiating framework agreements and multilateral memoranda of understanding to ensure that information can flow between the EBA and FIUs in Europe.

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*The Authority shall coordinate closely with EU Financial Intelligence Units.*

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Article 9a(1)(a) of the EBA Regulation



**6) Facilitating cooperation with third country authorities** to ensure that AML/CFT breaches by financial institutions that operate on a cross-border basis are addressed comprehensively and in a timely manner. To this effect, we will extend our existing equivalence assessments of third country authorities' confidentiality and regulatory regimes to include AML/CFT issues, and use these assessments to ensure that third country authorities can participate in the new European AML/CFT colleges as observers where warranted.

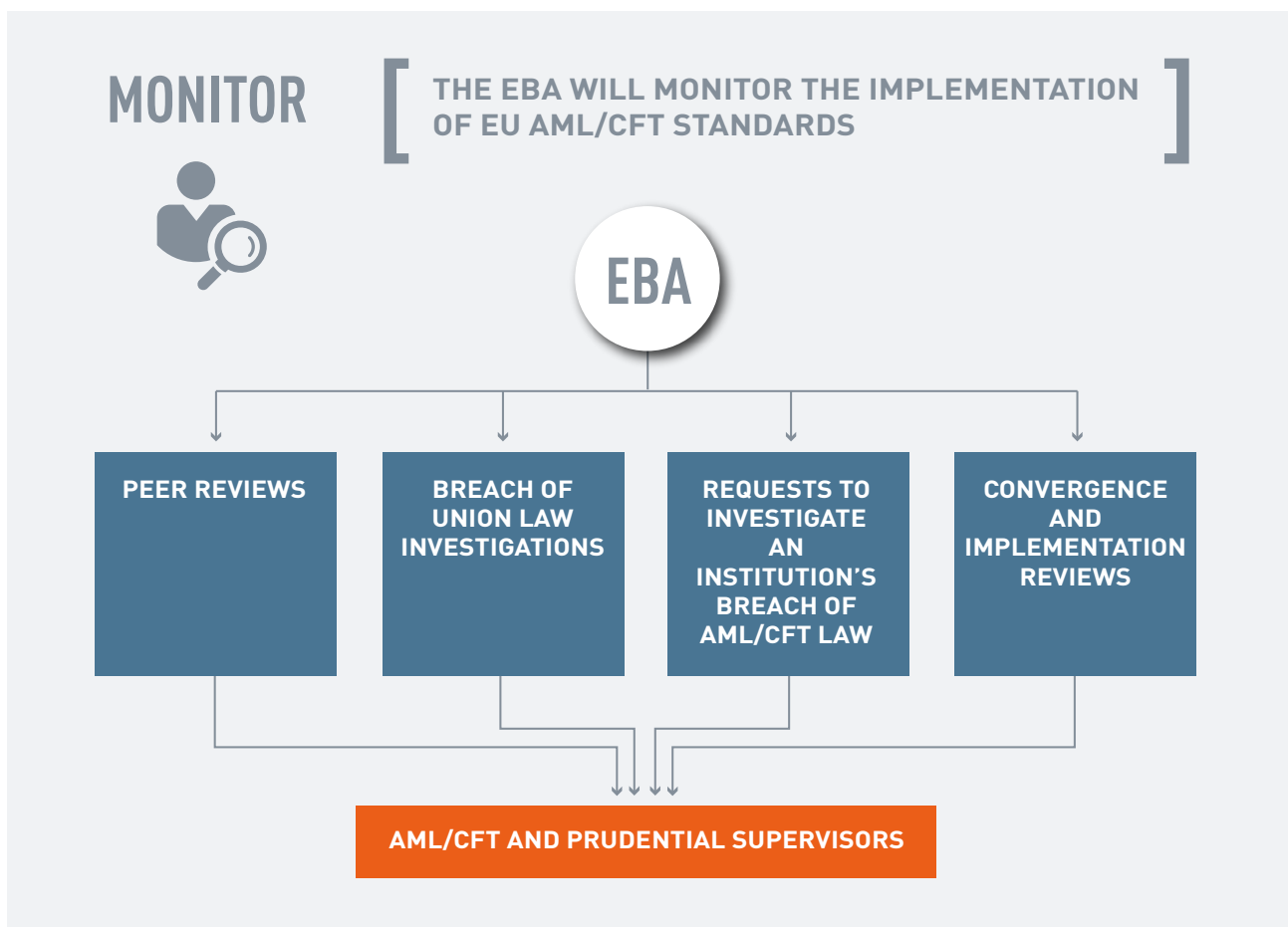
*The Authority shall have a leading role in contributing to facilitate cooperation between competent authorities in the Union and the relevant authorities in third countries.*

Article 9a(6) of the EBA Regulation

We will also establish direct relationships with third country authorities and use our expertise of engaging third countries in framework agreements to facilitate information flows and cooperation between EU competent authorities and third countries authorities outside the college setting.

Where in the context of our work with third country authorities we obtain information on ML/TF risks, we may draw on that information to inform our identification and assessment of ML/TF risks. We may draw on this information to request competent authorities to investigate using our powers under Article 9b of the EBA Regulation if we have indications that a financial institution may be materially breaching its AML/CFT obligations.

## What will the EBA do to 'monitor'?



## “OUR OBJECTIVE IS TO MONITOR THE IMPLEMENTATION OF EU AML/CFT STANDARDS”

Our objective is to monitor the implementation by competent authorities of EU AML/CFT standards to identify vulnerabilities in competent authorities' approaches to AML/CFT supervision and to take steps to mitigate them before ML/TF risks materialise. The EBA has not been given direct supervision or enforcement powers. Nevertheless, our new, extended mandate under the EBA Regulation will enable us to make assessments of competent authorities' ability to effectively tackle key EU-wide ML/TF risks, to undertake AML/CFT peer reviews and use our new powers under Article 9b of the EBA Regulation to request specific investigations as needed.

We will monitor by:

**1) Conducting thematic peer reviews** where necessary to test compliance by a cross-section of NCAs with a particular legal AML/CFT requirement. We will use peer reviews rather than full-scope AML/CFT implementation reviews or risk assessments under Article 9a of the EBA Regulation in two specific situations. One is where information we hold suggests that competent authorities' approaches to complying with requirements in the EU's legal AML/CFT framework diverge and where there is a risk that divergence will create gaps that expose the Union to ML/TF.

The other is where evidence suggests that some competent authorities struggle with the effective use of specific supervisory tools and measures. In those situations, we will use thematic peer reviews to identify good practices and, potentially, to link up competent authorities that have adopted good practices with those that find them challenging, to foster convergence and mutual learning.

**2) Using information from the EBA's new database and other public or confidential sources to ask competent authorities to take action** if we have indications that a financial institution's, or group of institutions', approach to AML/CFT materially breaches EU law. This is an important new tool that we intend to use proactively to ensure that ML/TF risks are addressed by competent authorities and financial institutions in a timely and effective manner. Unlike breach of Union law investigations under Article 17 of the EBA Regulation, these requests aim to rectify shortcomings at the level of financial institutions; they do not serve to establish whether or not a competent authority may be in breach of Union law. The EBA's Board of Supervisors adopts requests under Article 9b of the EBA Regulation based on a decision by the AMLSC.

**3) Investigating possible breaches of Union law** where there is clear evidence to suggest that an AML/CFT authority may be in breach of Union law (BUL). BUL investigations under Article 17 of the EBA Regulation remain an important corrective tool to address serious shortcomings by competent authorities. In the new AML/CFT setting, the breach of Union law power sits beside and complements the new powers of the EBA, notably in Article 9b, which more directed to request action towards supervised entities.

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*In matters concerning the prevention of and countering the use of the financial system for the purposes of money laundering and terrorist financing, in accordance with Directive (EU) 2015/849, the Authority may, where it has indications of material breaches, request a competent authority [...] to investigate possible breaches of Union law.*

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Article 9b(1) of the EBA Regulation

## What difference will the EBA's new powers make?

The new legal framework, with the EBA taking the lead on AML/CFT on behalf of all competent authorities, in combination with new AML/CFT powers is an important step towards achieving greater compatibility of national approaches to AML/CFT and consistently effective outcomes within the current EU AML/CFT framework. However, these changes may not be sufficient to achieve the significant and lasting change needed to protect the single market from financial crime.

The AMLD's minimum harmonisation and directive-based approach relies on national implementation, and limits how much convergence our guidelines and standards can achieve. This means that some gaps in the EU's AML/CFT defences may remain despite the EBA's best efforts, and, without a step-change at the national and EU levels, it is possible that the internal market will remain vulnerable to ML/TF risks.

The Council of the European Union has asked the European Commission to examine whether or not to confer certain supervisory responsibilities and powers on an EU body. As part of this, the Commission will examine the extent to which the existing, Directive-based approach that relies on a minimum harmonisation legal framework and implementation of EU rules at national level supports the effective application of AML/CFT rules and consistent outcomes. It will also examine whether or not more harmonisation and centralisation, for example through a regulation,

is needed to foster a more consistent and robust, EU-wide approach to preventing the single market from being used for the purposes of money laundering and terrorist financing.

The EBA welcomes this initiative and stands ready to support this process with its policy, IT, data and administrative infrastructure.

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*The Council [...] recognises the significance of recent changes to the legal framework [...] and the strengthened role of the European Banking Authority in fighting money laundering and terrorist financing [and] invites the Commission to [...]*

*[...] further explore actions to enhance the Union's anti-money laundering and countering the financing of terrorism framework, including by considering whether some aspects could be better addressed through a regulation.*

*[...] explore in particular the possibilities, advantages and disadvantages of conferring certain responsibilities and powers for anti-money laundering supervision to a Union body*

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Council Conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism, 5 December 2019

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