

EBA/GL/2022/05

14 June 2022

Final Report

Guidelines

On policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/849

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Executive Summary

1. The AML/CFT compliance function is central to credit or financial institutions' AML/CFT efforts. This is why Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing requires that credit or financial institutions appoint an AML/CFT compliance officer at the management level. It also provides that credit or financial institutions that have a management body identify the member of the management body who is ultimately responsible for the implementation of the law, regulations and administrative provisions necessary to comply with AML/CFT requirements. It does not set out in detail how these provisions should be applied.
2. Through these guidelines, the EBA will create a common understanding, by competent authorities and credit or financial institutions, of credit or financial institutions' AML/CFT governance arrangements. A common understanding, which is applied consistently and enforced as necessary, is key to strengthening the EU's AML/CFT defences.
3. These guidelines set clear expectations of the role, tasks and responsibilities of the AML/CFT compliance officer and the management body. They specify that credit or financial institutions should appoint one member of their management body who will ultimately be responsible for the implementation of the AML/CFT obligations, and clarify the tasks and functions of that person. They also describe the roles and responsibilities of the AML/CFT compliance officer, when this person is appointed by the management body pursuant to the proportionality criteria. When the credit or financial institution is part of a group, the guidelines prescribe that a group AML/CFT compliance officer should be appointed and clarify this person's tasks and responsibilities.
4. These guidelines apply to all existing management body structures and do not advocate any particular structure. They complement, but do not replace, relevant guidelines issued by the European Supervisory Authorities on wider governance arrangements and suitability checks.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be six months after the publication of the translations. The guidelines will apply from 1 December 2022.

Background and rationale

Background

5. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing requires that credit or financial institutions have in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing (ML/TF). In accordance with Article 8(4) of this Directive, where appropriate with regard to the size and nature of the business, credit or financial institutions have to appoint a compliance officer at the management level. Article 46(4) further provides that credit or financial institutions that have a management body also identify the member of the management body who is ultimately responsible for the implementation of the law, regulations and administrative provisions necessary to comply with AML/CFT requirements.
6. These provisions complement requirements in other sectoral laws that relate to credit or financial institutions' governance and risk management systems, and suitability requirements for senior function holders.
7. In 2017, in its Supranational Risk Assessment, the European Commission asked the ESAs to develop guidance to clarify the role of AML/CFT compliance officers in credit or financial institutions. At the time, the ESAs considered that existing guidelines on internal governance were sufficient to fulfil the Commission's request.
8. There have, however, been a number of reports that suggest that the requirements set out in Directive (EU) 2015/849 have been implemented unevenly across different sectors and Member States, and that they are not always applied effectively. This can have adverse consequences for the integrity of the EU's financial system.
9. For example,
 - a) In their 2017 Joint Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector¹, the European Supervisory Authorities (ESAs) considered that the Union's financial sector was exposed to money laundering and terrorist financing (ML/TF) risks arising from ineffective AML/CFT systems and controls. Findings from national supervisors pointed to a number of causes for these shortcomings. These included senior management of some credit or financial institutions affording low priority to AML/CFT issues, in particular when paired with a corporate culture that pursues profits at the expense of robust compliance. This lack of senior management buy-in meant that ensuring adequate resources and hiring suitably qualified staff for AML/CFT roles were not seen as a priority, which appeared to affect the quality of financial institutions' AML/CFT controls.

¹ JC/2017/07 of 20 February 2017

- b) The 2019 Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions² found that many credit institutions in the Commission's sample had not established adequate risk management systems and controls. The analysis revealed deficiencies in credit institutions' anti-money laundering/countering the financing of terrorism-related governance arrangements (including the 'three lines of defence'), their internal reporting, group policies and senior managements' responsibilities and accountability.
- c) The EBA found in its 2019/2020 AML/CFT reviews of competent authorities' approaches to the AML/CFT supervision of banks³ that AML/CFT supervisors in some Member States did not interact with financial institutions' senior management because there was no legal or regulatory requirement in those Member States to appoint an AML/CFT compliance officer at a level that was sufficiently senior to report to the financial institution's senior management body. As a result, in those Member States there was a risk that AML/CFT supervision may not be effective.
- d) The EBA noted in its 2021 Opinion on the risks of money laundering and terrorist financing affecting the European Union's financial sector⁴ that there was still a sizeable proportion of competent authorities that considered that the quality of some controls had remained poor and many competent authorities identified persisting deficiencies in some key controls.

Rationale

10. The EBA has a legal duty to prevent the use of the EU's financial system for ML/TF purposes, and a mandate to lead, monitor and coordinate the EU financial sector's fight against ML/TF. Through these guidelines, the EBA aims to achieve a common understanding, by competent authorities and credit or financial institutions, of the role and responsibilities of

- a. the AML/CFT compliance officer; and
- b. the management body with regard to AML/CFT or the senior manager where no management body exists.

11. A common understanding of the role and responsibilities of AML/CFT compliance officers and the management body or senior manager, which is applied and enforced consistently, is important to ensure that credit or financial institutions in all Member States implement sound and effective AML/CFT systems and controls and to protect the EU's financial sector from financial crime.

Overview

12. In particular, these guidelines set out provisions on:

² https://ec.europa.eu/info/sites/info/files/report_assessing_recent_alleged_money-laundering_cases_involving_eu_credit_institutions.pdf

³ EBA/Rep/2020/06

⁴ EBA/Op/2021/04 of 3 March 2021

1. The role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT: Guideline 4.1 specifies the duties and tasks of the management body in the AML/CFT framework.
 2. The role and responsibilities of the AML/CFT compliance officer: Guideline 4.2 specifies the need to appoint an AML/CFT compliance officer at a level which entails the powers to propose, on his/her own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function. Guideline 4.2 also specifies the suitability requirements for the role of AML/CFT compliance officer as well as explaining the roles and responsibilities of the person employed in this role.
 3. The organisation of the AML/CFT compliance function at group level⁵: Guideline 4.3 sets out specific roles and responsibilities and clarifies the reporting lines in respect of the role of the AML/CFT compliance officer function at a group level, in order to ensure that shortcomings in the AML/CFT framework affecting the entire group or a large part of the group are addressed effectively.
13. The provisions set out in these guidelines should be applied in a manner that is effective and proportionate to the credit or financial institution's type, size and internal organisation, the nature, scope and complexity of its activities, and the ML/TF risks to which the credit or financial institution is exposed.

Interaction with other guidelines

14. The guidelines complement the following ESAs guidelines:

- the EBA guidelines on internal governance under Directive 2013/36/EU⁶;
- the joint EBA and ESMA guidelines on the assessment of the suitability of members of the management body and key function holders⁷;
- the ESMA guidelines on certain aspects of the MiFID II compliance function requirements⁸;
- the EIOPA guidelines on system of governance⁹;
- the EBA guidelines on outsourcing arrangements¹⁰;
- the EIOPA guidelines on outsourcing to cloud service providers¹¹;

⁶ EBA/GL/2021/05

⁷ ESMA35-36-2319, EBA/GL/2021/06

⁸ ESMA35-36-1946

⁹ EIOPA-BoS-14/253 EN

¹⁰ EBA/GL/2019/02

¹¹ EIOPA-BoS-20-002



- the ESMA guidelines on outsourcing to cloud service providers¹²; and
- the EBA guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and Financial Intelligence Units under Directive 2013/36/EU¹³.

¹² ESMA50-157-2403

¹³ EBA/GL/2021/15



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1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹⁴. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and credit or financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view 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 as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2022/05'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹⁴ 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 (OJ L 331, 15.12.2010, p.12)

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These guidelines specify the role, tasks and responsibilities of the AML/CFT compliance officer, the management body and senior manager in charge of AML/CFT compliance as well as internal policies, controls and procedures, as referred to in Article 8, and Article 45 and Article 46 of Directive (EU) 2015/849.

6. These guidelines apply to credit or financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849. These guidelines apply to all existing management body structures, irrespective of the board structure used (a unitary and/or a dual board structure and/or another structure) across Member States.

7. The terms ‘management body in its management function’ and ‘management body in its supervisory function’ are used throughout these guidelines without referring to any governance structure, and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law. National company law may contain specific provisions regarding the management body and these guidelines apply without prejudice to these provisions.

Addressees

8. These guidelines are addressed to competent authorities as defined in Article 4(2) (iii) of Regulation (EU) No 1093/2010. They are also addressed to credit or financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849, which are financial sector operators referred to in Article 4(1a) of Regulation (EU) No 1093/2010.

Definitions

9. Unless otherwise specified, the terms used and defined in Directive (EU) 2015/849 have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Management body

means the credit or financial institution’s body or bodies, which are appointed in accordance with national law, and are empowered to set the strategy, objectives and overall direction of the credit or financial institution, and which oversee and monitor management decision-making, and



include the persons who effectively direct the business of the said institution.

Management body in its supervisory function

means the management body acting in its role of overseeing and monitoring management decision-making.

Management body in its management function

means the management body acting in its role of day-to-day management of the credit or financial institution.

3. Implementation

Date of application

10. These guidelines apply from 1 December 2022.

4. Guidelines

4.1 The role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT

11. The management body should be responsible for approving the credit or financial institution's overall AML/CFT strategy and for overseeing its implementation. To this end, it should collectively possess adequate knowledge, skills and experience to be able to understand the ML/TF risks related to the credit or financial institution's activities and business model, including the knowledge of the national legal and regulatory framework relating to the prevention of ML/TF.

4.1.1 The role of the management body in its supervisory function in the AML/CFT framework

12. The management body in its supervisory function should be responsible for overseeing and monitoring the implementation of the internal governance and internal control framework to ensure compliance with applicable requirements in the context of the prevention of money laundering and terrorism financing (ML/TF).

13. In addition to the provisions set out in the ESAs' guidelines on internal governance¹⁵, as applicable, a credit or financial institution's management body in its supervisory function should:

- a) be informed of the results of the business-wide ML/TF risk assessment;
- b) oversee and monitor the extent to which the AML/CFT policies and procedures are adequate and effective in light of the ML/TF risks to which the credit or financial institution is exposed and take appropriate steps to ensure remedial measures are taken where necessary;
- c) at least once a year, review the activity report of the AML/CFT compliance officer and obtain interim updates more frequently for activities that expose the credit or financial institution to higher ML/TF risks;
- d) at least once a year, assess the effective functioning of the AML/CFT compliance function, including by taking into account the conclusions of any AML/CFT-related internal and/or external audits that may have been carried out, including with regard to the appropriateness of the human and technical resources allocated to the AML/CFT compliance officer.

14. The management body in its supervisory function should ensure that the member of the management body referred to in section 4.1.3. or where applicable the senior manager referred to

¹⁵ EBA guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05; ESMA guidelines on certain aspects of the MiFID II compliance function requirements: ESMA35-36-1946; EIOPA guidelines on system of governance: EIOPA-BoS-14/253 EN



in section 4.1.4., who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2015/849:

- a) has the knowledge, skills and experience necessary to identify, assess and manage the ML/TF risks to which the credit or financial institution is exposed, and the implementation of AML/CFT policies, controls and procedures;
- b) has a good understanding of the credit or financial institution's business model and the sector in which it operates and the extent to which this business model exposes the credit or financial institution to ML/TF risks;
- c) is informed in a timely manner of decisions that may affect the risks to which the credit or financial institution is exposed.

15. The management body in its supervisory function should have access to and take into account data and information of sufficient detail and quality to enable it to discharge its AML/CFT functions effectively. At a minimum, the management body in its supervisory function should have timely and direct access to the activity report of the AML/CFT compliance officer, the report of the internal audit function, the findings and observations of external auditors, where applicable, as well as the findings of the competent authority, relevant communications with the FIU and supervisory measures or sanctions imposed.

4.1.2. The role of the management body in its management function in the AML/CFT framework

16. In relation to internal policies, controls and procedures referred to in Articles 8(3) and 8(4) of Directive (EU) 2015/849, a credit or financial institution's management body in its management function should:

- a) implement the appropriate and effective organisational and operational structure necessary to comply with the AML/CFT strategy adopted by the management body, paying particular attention to the sufficient authority and the appropriateness of the human and technical resources allocated to the AML/CFT compliance officer function, including the need for a dedicated AML/CFT unit to assist the AML/CFT compliance officer;
- b) ensure implementation of internal AML/CFT policies and procedures;
- c) review the AML/CFT compliance officer's activity report, at least annually;
- d) ensure adequate, timely and sufficiently detailed AML/CFT reporting to the competent authority;
- e) where operational functions of the AML/CFT compliance officer are outsourced, ensure compliance with the ESAs guidelines on outsourcing arrangements¹⁶ and ESAs guidelines on

¹⁶ EBA guidelines on outsourcing arrangements: EBA/GL/2019/02; EIOPA guidelines on outsourcing to cloud service providers: EIOPA-BoS-20-002; ESMA guidelines on outsourcing to cloud service providers: ESMA50-157-2403



internal governance¹⁷, where applicable, and receive regular reporting from the service provider to inform the management body.

4.1.3. Identification of the member of the management body responsible for AML/CFT

17. The member of the management body to be identified in accordance with Article 46(4) of Directive (EU) 2015/849 should, in particular, have sufficient knowledge, skills and experience regarding ML/TF risks, and the implementation of AML/CFT policies, controls and procedures, with a good understanding of the credit or financial institution's business model and the sector in which the credit or financial institution operates.

18. The member of the management body referred to in Article 46(4) of Directive (EU) 2015/849 should commit sufficient time and have sufficient resources to perform his/her AML/CFT duties effectively. He/she should report comprehensively about his/her tasks as mentioned in section 4.1.5. and regularly inform, where necessary and without undue delay, the management body in its supervisory function.

4.1.4. Identification of a senior manager responsible for AML/CFT where no management body is in place

19. Where no management body is in place, the credit or financial institution should appoint a senior manager who is ultimately responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2015/849, with sufficient time, resources and authority to perform his/her duties effectively.

20. The senior manager referred to in paragraph 19 should have sufficient knowledge, skills and experience regarding ML/TF risks, and the implementation of AML/CFT policies, controls and procedures, with a good understanding of the credit or financial institution's business model and the sector in which the credit or financial institution operates. In addition, he/she should be given sufficient time, resources and authority to perform his/her duties effectively.

4.1.5. Tasks and role of the member of the management body or senior manager responsible for AML/CFT

21. Without prejudice to the overall and collective responsibility of the management body, when appointing the member of the management body, or the senior manager referred to in paragraphs 17 and 19, credit or financial institutions should identify and take into account potential conflicts of interest and take steps to avoid or mitigate them.

22. The member of the management body, or the senior manager where designated, responsible for AML/CFT should ensure that the entire management body, or the senior management where no management body is in place, is aware of the impact of ML/TF risks on their business-wide risk profile. The responsibilities of the member of the management body, or the senior manager where designated, responsible for AML/CFT, in view of the performance of their

¹⁷ EBA guidelines on internal governance under Directive 2013/36/EU, EBA/GL/2021/05 of 2 July 2021



task as referred to in Article 46(4) of Directive (EU) 2015/849, and in particular in relation to the implementation of policies, controls and procedures to mitigate and manage effectively the risks of ML/TF as referred to in Article 8 of that Directive, should include at least:

- a) ensuring that the AML/CFT policies, procedures and internal control measures are adequate and proportionate, taking into account the characteristics of the credit or financial institution and the ML/TF risks to which it is exposed;
- b) carrying out with the management body the assessment of whether it would be appropriate to appoint a separate AML/CFT compliance officer at management level, as referred in section 4.2.2.;
- c) supporting the management body in assessing the need for a dedicated AML/CFT unit to assist the AML/CFT compliance officer in carrying out his/her functions, taking into account the scale and complexity of the credit or financial institution's operations and exposure to the ML/TF risks. Staff within this unit should possess the necessary expertise, skills and knowledge to assist the AML/CFT compliance officer, who should be involved in the recruitment process;
- d) ensuring that there is periodical reporting to the management body on the activities carried out by the AML/CFT compliance officer and that the management body is provided with sufficiently comprehensive and timely information and data on ML/TF risks and AML/CFT compliance, which is necessary to allow the management body to carry out the role and functions entrusted to it. Such information should also cover the credit or financial institution's engagements with the national competent authority and communications with the FIU, without prejudice to the confidentiality of STRs, and any ML/TF-related findings of the competent authority against the credit or financial institution including measures or sanctions imposed;
- e) informing the management body of any serious or significant AML/CFT issues and breaches and recommending actions to remedy them;
- f) ensuring that the AML/CFT compliance officer (i) has direct access to all the information necessary to perform his/her tasks, (ii) has sufficient human and technical resources and tools to be able to adequately perform the tasks assigned to them, and (iii) is well informed of the AML/CFT-related incidents and shortcomings identified by the internal control systems and by the national and, in the case of groups, foreign supervisory authorities.

23. The member of the management body, or the senior manager where designated, responsible for AML/CFT should be the main contact point for the AML/CFT compliance officer within the management. In addition, the member of the management body, or the senior manager where designated, responsible for AML/CFT should ensure that any AML/CFT concerns that the AML/CFT compliance officer has are duly addressed and, where this is not possible, are duly considered by the management body in its management function or by the senior management where applicable. If the management body in its management function or senior management where applicable decide not to follow the recommendation of the AML/CFT compliance officer,

they should duly justify and record their decision in light of the risks and concerns raised by the AML/CFT compliance officer. In the case of a significant incident, the AML/CFT compliance officer should have direct access to the management body in its supervisory function.

4.2 The role and responsibilities of the AML/CFT compliance officer

4.2.1 Appointment of the AML/CFT compliance officer

24. When deciding whether to appoint the AML/CFT compliance officer in accordance with Article 8(4) of Directive (EU) 2015/849, the management body should take into account the scale and complexity of the credit or financial institution's operations and its risk exposure to ML/TF pursuant to the criteria set out in section 4.2.2.

25. The AML/CFT compliance officer should be appointed at management level. He/she should have sufficient authority to propose, on his/her own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function.

26. Where the AML/CFT compliance officer is appointed in accordance with Article 8(4) of Directive (EU) 2015/849, the management body should determine whether that role will be carried out on a full-time basis or whether it may be carried out by an employee or an officer in addition to his/her existing functions within the credit or financial institution.

27. Where the functions of the AML/CFT compliance officer are to be entrusted to an officer or employee who already has other duties or functions within the credit or financial institution, the management body should identify and consider possible conflicts of interest and take the steps necessary to avoid or, where this is not possible, manage these. The management body should ensure that that person can allocate sufficient time to the functions of AML/CFT compliance officer.

28. The AML/CFT compliance officer should make themselves available to the competent authority and the FIU upon request, and should therefore normally be contracted and work in the country in which the credit or financial institution is established.

29. Where commensurate with the ML/TF risk to which the credit or financial institution is exposed and to the extent that this is permitted under the national law, the AML/CFT compliance officer may be contracted to work in another jurisdiction. In those cases the credit or financial institution should have the necessary systems and controls in place to ensure that the AML/CFT compliance officer has access to all the necessary information and systems required to perform his/her tasks and is available to meet the local FIU and the competent authority without delay. The credit or financial institution should also be able to demonstrate to its competent authority that the measures it has put in place in this regard are adequate and effective.

30. The AML/CFT compliance officer should be able to assign and delegate his/her tasks as set out in section 4.2.4. to other officers and employees acting under his/her direction and supervision,



provided that ultimate responsibility for the effective fulfilment of those tasks remains with the AML/CFT compliance officer.

31. The AML/CFT compliance officer should be part of the second line of defence and, as such, part of an independent function, and the following conditions should be met:

- a) The AML/CFT compliance officer should be independent from the business lines or units he/she controls and he/she cannot be subordinate to a person who has responsibility for managing any of those business lines or units.
- b) The credit or financial institution has put in place internal procedures to ensure that the AML/CFT compliance officer has at all times unrestricted and direct access to all information that is necessary to the performance of his/her function. The decision on which information he/she needs to access in this regard should be the AML/CFT compliance officer's alone.
- c) In the case of a significant incident, the AML/CFT compliance officer should be able to report and have direct access to the management body in its supervisory function or to the senior management where no management body is in place.

4.2.2 Proportionality criteria for the appointment of a separate AML/CFT compliance officer

32. A credit or financial institution should appoint a separate AML/CFT compliance officer unless it is a sole trader or has a very limited number of employees or the reasons set out in paragraph 33 justify the non-appointment.

33. When the management body decides not to appoint a separate AML/CFT compliance officer, the reasons should be justified and documented, and explicitly refer to at least the following criteria:

- a) the nature of the credit or financial institution's business and the ML/TF risks associated therewith, taking into account its geographical exposure, customer base, distribution channels and products and services offering;
- b) the size of its operations in the jurisdiction, the number of its customers, the number and volume of its transactions and the number of its full-time equivalent employees;
- c) the legal form of the credit or financial institution, including whether the credit or financial institution is part of a group.

34. Where a separate AML/CFT compliance officer is not appointed, the credit or financial institution should organise the performance of the AML/CFT compliance officer tasks (see below section 4.2.4 on *Tasks and role of the AML/CFT compliance officer*) by either the member of the management body as referred to in section 4.1.3 or the senior manager responsible for AML/CFT as referred to in section 4.1.4, or by outsourcing operational functions as mentioned in section 4.2.6, or by a combination of the previous options.

35. When the AML/CFT compliance officer acts for two or more entities within the group or is charged with other tasks, the credit or financial institution should ensure that these multiple appointments still allow the AML/CFT compliance officer to effectively perform his/her functions. The AML/CFT compliance officer should operate for different entities only if the entities are part of the same group. However, due to the specific nature of the collective investment undertakings sector¹⁸, the AML/CFT compliance officer could service several funds.

4.2.3 Suitability, skills and expertise

36. In relation to employee screening referred to in Article 8(4) (a) of Directive (EU) 2015/849, credit or financial institutions should, prior to the appointment, assess whether the AML/CFT compliance officer possesses:

- a) the reputation, honesty and integrity necessary to perform his/her function;
- b) the appropriate AML/CFT skills and expertise, including knowledge of the applicable legal and regulatory AML/CFT framework, and the implementation of AML/CFT policies, controls and procedures;
- c) sufficient knowledge and understanding of the ML/TF risks associated with the business model of the credit or financial institution to perform his/her function effectively;
- d) relevant experience regarding the identification, assessment and management of the ML/TF risks; and
- e) sufficient time and seniority to perform his/her functions effectively, independently and autonomously.

37. The credit or financial institutions should ensure that the AML/CFT compliance function operates on an ongoing basis as part of its overall business continuity management. It should cater for the possibility of having the AML/CFT compliance officer discontinue his/her functions and the availability of a delegate with appropriate skills and expertise to take over the functions of the AML/CFT compliance officer in the event that he/she is absent for a period of time or the integrity of the AML/CFT compliance officer is called into question.

4.2.4 Tasks and role of the AML/CFT compliance officer

38. The role and responsibilities of the AML/CFT compliance officer should be clearly defined and documented.

a. Development of a risk assessment framework

¹⁸ A collective investment undertaking or CIU means a UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU.



39. In relation to the identification and assessment of risk referred to Article 8(1) of Directive (EU) 2015/849, the AML/CFT compliance officer should develop and maintain an ML/TF risk assessment framework for business-wide and individual ML/TF risk assessments in line with the EBA guidelines on ML/TF risk factors¹⁹.

40. The AML/CFT compliance officer should report the results of the business-wide and individual ML/TF risk assessment to the management body, via the member of the management body, or to the senior manager responsible for AML/CFT, or directly, if he/she deems it necessary. The AML/CFT compliance officer should propose to the management body the measures to take to mitigate those risks. The launch of a new product or service or significant changes to existing ones, the development of a new market or the undertaking of new activities should not be initiated until adequate resources to understand and manage the associated risks are available and effectively implemented.

b. Development of policies and procedures

41. The AML/CFT compliance officer should ensure that adequate policies and procedures are put in place, kept up to date and implemented effectively on an ongoing basis. The policies and procedures should be commensurate with the ML/TF risks that the credit or financial institution has identified. The AML/CFT compliance officer should at least:

- a) set out the AML/CFT policies and procedures to be adopted by the credit or financial institution, as well as the controls and systems to be implemented under Article 8(4) of Directive (EU) 2015/849;
- b) ensure that AML/CFT policies and procedures are implemented effectively by the credit or financial institution as explained under section d on Monitoring compliance;
- c) ensure that AML/CFT policies and procedures are reviewed regularly and amended or updated where necessary;
- d) propose how to address any changes in legal or regulatory requirements or in ML/TF risks as well as how to best address deficiencies or shortcomings identified through monitoring or supervisory activities.

42. The policies, controls and procedures referred to in Article 8(4) of Directive (EU) 2015/849 should at least include the following:

- a) the business-wide and individual ML/TF risk assessment methodology;

¹⁹ EBA revised guidelines on ML/TF risk factors: EBA/GL/2021/02



- b) customer due diligence including that provided by the EBA revised guidelines on ML/TF risk factors²⁰, and a customer acceptance process as explained below in section c on Customers, in particular for high-risk customers;
- c) internal reporting (analysis of unusual transactions) and the submission of STRs to the FIU;
- d) record keeping; and
- e) provisions for monitoring AML/CFT compliance as in section d on Monitoring compliance.

c. Customers, including high-risk customers

43. The AML/CFT compliance officer should be consulted before a final decision is taken by senior management on onboarding new high-risk customers or maintaining business relationships with high-risk customers in line with the risk-based internal AML/CFT policies of the credit or financial institution, and in particular in situations where the senior management's approval is explicitly required under Directive (EU) 2015/849. If senior management decides not to follow the advice of the AML/CFT compliance officer, it should duly record its decision and address how it proposes to mitigate the risks raised by the AML/CFT compliance officer.

d. Monitoring compliance

44. As a second line of defence, the AML/CFT compliance officer should be responsible for monitoring whether the measures, policies, controls and procedures implemented by the credit or financial institution comply with the credit or financial institution's AML/CFT obligations. The AML/CFT compliance officer should also oversee the effective application of AML/CFT controls applied by business lines and internal units (first line of defence).

45. The AML/CFT compliance officer should ensure that the AML/CFT framework is updated where necessary, and in any case when deficiencies are detected, new risks emerge or the legal or regulatory framework has changed.

46. The AML/CFT compliance officer should recommend to the management body corrective measures to be taken to address identified weaknesses in the credit or financial institution's AML/CTF framework, including weaknesses identified by competent authorities or by internal or external auditors.

e. Reporting to the management body

47. The AML/CFT compliance officer should advise the management body on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should

²⁰ Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions ('Guidelines on ML/TF risk factors') under Articles 17 and 18(4) of Directive (EU) 2015/849: EBA/GL/2021/02

provide his/her assessment of the possible impact of any changes in the legal or regulatory environment on the credit or financial institution's activities and compliance framework.

48. The AML/CFT compliance officer should bring to the attention of the member of the management body or the senior manager responsible for AML/CFT:

- a) the areas where the operation of AML/CFT controls should be implemented or improved;
- b) the appropriate improvements suggested in relation to point (a) above;
- c) a progress report of any significant remedial programmes, at least once a year as part of the activity report referred to in paragraph 50 and on an ad hoc basis or periodically, depending on the improvements, to provide information about the level of exposure to the ML/TF risks, and the measures taken or recommended to reduce and effectively manage these risks;
- d) whether the human and technical resources allocated to the AML/CFT compliance function are insufficient and should be reinforced.

49. The credit or financial institution needs to stand ready to share a copy of the activity report referred to in paragraph 50 with the competent authority.

50. The AML/CFT compliance officer should produce an activity report on at least an annual basis. The activity report should be proportionate to the scale and nature of the activities of the credit or financial institution. The activity report may, where appropriate, be based on information already sent to the national competent authorities in the form of other reports. The activity report should contain at least the following information:

1) On the ML/TF risk assessment:

- a) a summary of the main findings of the business-wide ML/TF risk assessment as referred to in Article 8 of Directive (EU) 2015/849, where such an update has been performed in the past year, and a confirmation of whether it was required by the competent authority to be submitted for the reporting year;²¹
- b) a description of any changes related to the method used by the credit or financial institution to assess the individual customer risk profile, highlighting how such change is aligned to the credit or financial institution's business-wide ML/TF risk assessment;
- c) the classification of customers by risk category, including the number of customer files by risk category for whom CDD reviews and updates are outstanding;
- d) information and statistical data on:
 - i) the number of unusual transactions detected;
 - ii) the number of unusual transactions analysed;

²¹ Please refer to the EBA guidelines on ML/TF risk factors on conducting risk assessments (EBA/GL/2021/02)



- iii) the number of reports of suspicious transactions or activity to the FIU (distinguished by country of operations);
- iv) the number of customer relationships ceased by the credit or financial institution due to AML/CFT concerns;
- v) the number of requests for information received from the FIU, courts and law enforcement agencies.

2) On resources:

- e) a brief description of the AML/CFT organisation structure and, where appropriate, of any significant changes made in the past year and of the underlying reasoning;
- f) a brief description of the human and technical resources allocated to the AML/CFT compliance function by the credit or financial institution;
- g) where applicable, the list of AML/CFT processes outsourced with a description of the oversight performed by the credit or financial institution on those activities.

3) On policies and procedures:

- h) a summary of important measures taken and procedures adopted during the year, including a brief description of the recommendations, problems, shortcomings and irregularities identified in the year of the reporting;
- i) a description of the compliance monitoring actions undertaken to assess application of the credit or financial institution's AML/CFT policies, controls and procedures by the credit or financial institution's employees, agents, distributors and service providers, as well as the adequacy of any monitoring tools employed by the credit or financial institution for AML/CFT purposes;
- j) a description of the AML/CFT training activities completed, and of the training plan for next year;
- k) a plan of activities of the AML/CFT compliance officer function for the subsequent year;
- l) findings of internal and external audits relevant to AML/CFT and any progress made by the credit or financial institution to address these findings;
- m) supervisory activities, including communications with the credit or financial institution, carried out by the competent authority, reports submitted, breaches identified and sanctions imposed together with how the credit or financial institution is undertaking to remedy the breaches identified and the stage at which the remedial action is, without prejudice to any other periodical report that may be required in the case of supervisory activity or remedial action.

f. Reporting of suspicious transactions

51. In relation to the AML/CFT compliance officer's obligation under Article 33(2) of Directive (EU) 2015/849 to transmit information referred to in paragraph (1) of that Article, he/she should make sure that other members of staff whose assistance is sought with the discharge of aspects of this function have the skills, knowledge and suitability to assist with that task. Due consideration should be given to the sensitivity and confidentiality of information that may be disclosed and the non-disclosure obligations the credit or financial institution has to adhere to.

52. When the AML/CFT compliance officer transmits information to the FIU in accordance with Article 33(2) of Directive (EU) 2015/849, he/she should ensure that the information is transmitted in a format and through means which comply with any guidelines issued by the national FIU, in an effective manner. As part of his/her role under that provision, the AML/CFT compliance officer should:

- a) understand the functioning and design of the transaction monitoring system, including scenarios covered according to the ML/TF risks posed to the credit or financial institution and internal procedures to handle alerts;
- b) receive reports from the credit or financial institution's employees, agents or distributors, or reports generated otherwise by the credit or financial institution's systems, of knowledge or suspicion of ML/TF, or that a person may have been, is or may be connected with ML/TF;
- c) ensure that these reports are considered promptly so as to determine whether there is knowledge or suspicion that funds are proceeds of criminal activity including ML/TF, or whether a person may have been, is or may be connected with ML/TF; the AML/CFT compliance officer should also determine, document and implement a prioritisation process for the internal reports received so that internal reports concerning especially high-risk situations are treated with the necessary urgency;
- d) while assessing the reports received, keep a record of all evaluations carried out as well as any feedback received from the FIU subsequently to improve the detection of future suspicious transactions;
- e) ensure that knowledge or suspicion of ML/TF or of a person's connection with ML/TF are promptly reported to the FIU, submitting with the report such facts, events or information and documentation as necessary to substantiate the suspicion or instances of reasonable grounds to suspect ML/TF;
- f) ensure a prompt and exhaustive response to any request for information made by the FIU; and
- g) consider regularly the reasons why alerts of unusual activity or transactions were not escalated as internal reports so as to determine whether there are any issues that need to be addressed to ensure effective detection of suspicious activity or transactions.

53. The AML/CFT compliance officer should ensure that the credit or financial institution's internal controls will enable it to comply with any guidance provided by the FIU.

54. Credit or financial institutions should draw the attention of their managers and employees to the obligation to comply strictly with the prohibition on informing the customer or third parties

that an ML/TF analysis is ongoing or may be started and to limit access to this information to the persons who need it for the performance of their functions. While there is a non-disclosure obligation applicable within the credit or financial institution, the AML/CFT compliance officer should still consider carefully to whom information on either any reports submitted to the FIU or any request for information received from the FIU is provided within the credit or financial institution. The reporting procedure should be confidential and the identity of the persons involved in the preparation and forwarding of the report should be protected by privacy policy.

g. Training and awareness

55. In accordance with the obligation under Article 46(1) of Directive (EU) 2015/849 and as specified in the EBA revised guidelines on ML/TF risk factors²², the AML/CFT compliance officer should duly inform staff about the ML/TF risks to which the credit or financial institution is exposed including ML/TF methods, trends and typologies, as well as of the risk-based approach implemented by the credit or financial institution to mitigate these risks. This information may take various forms, such as company letters, the intranet, meetings.

56. The AML/CFT compliance officer should oversee the preparation and implementation of an ongoing AML/CFT training programme. In cooperation with the human resources department of the credit or financial institution, an annual plan of training and education of staff should be documented and be referred to in the activity report to the management body as per paragraph 50.

57. The AML/CFT compliance officer should ensure that the internal reporting procedures adopted by the credit or financial institution are brought to the attention of all staff.

58. In addition to general education, for the purposes of Article 46(1) of Directive (EU) 2015/849 the AML/CFT compliance officer should assess the specific training needs within the credit or financial institution and ensure that adequate theoretical and practical training is provided to the persons exposed to different level of ML/TF risks, such as:

- a) persons working in the compliance function under the responsibility of the AML/CFT compliance officer;
- b) persons in contact with customers or tasked with carrying out their transactions (employees, agents and distributors);
- c) persons responsible for developing procedures or internal tools applicable to activities that may be sensitive to ML/TF risk.

59. The content of the specific training programmes delivered to persons with different levels of exposure to ML/TF risks should be adjusted on a risk-sensitive basis as described in the EBA revised guidelines on ML/TF risk factors²³.

²² Guideline 6: *Training* of EBA revised guidelines on ML/TF risk factors: EBA/GL/2021/02

²³ Guideline 6: *Training* of EBA revised guidelines on ML/TF risk factors: EBA/GL/2021/02



60. The AML/CFT compliance officer should determine indicators of assessment to check the effectiveness of training provided.

61. Where the credit or financial institution adopts a training and awareness-raising programme developed abroad, e.g. by its registered office or parent company, the AML/CFT compliance officer should ensure that this programme is adapted to the legal and regulatory rules applicable at national level, as well as with respect to ML/TF typologies and specific activities of the credit or financial institution.

62. Where certain training activities are outsourced to a service provider, the AML/CFT compliance officer should ensure (i) that the service provider has the required AML/CFT knowledge to guarantee the quality of the training to be provided, (ii) that the management conditions of the outsourcing are set and respected, and (iii) that the content of this training is adapted to the specific features of the credit or financial institution concerned.

4.2.5 Relationship between the AML/CFT compliance function and other functions

63. Both the compliance function and the independent AML/CFT compliance function should be located in the second line of defence of the credit and financial institutions.

64. Where the AML/CFT compliance function is different from the general compliance function, in addition to the provisions of ESAs guidelines on internal governance²⁴ on a transparent and documented decision-making process and clear allocation of responsibilities and authority within its internal control framework, credit or financial institutions should meet the provisions set out in this section.

65. The independent audit function referred to in Article 8(4)(b) of Directive (EU) 2015/849 should not be combined with the AML/CFT compliance function.

66. The risk management function, to the extent that the credit or financial institution has a risk management function, and, where established, the risk committee, should have access to relevant information and data necessary to perform their role, including information and data from relevant corporate and internal control functions, such as AML/CFT compliance.

67. A good cooperation to exchange information should take place between the head of risk management and the AML/CFT compliance officer. The AML/CFT compliance officer should cooperate with the risk function for the purpose of setting AML/CFT methodologies coherent with the risk management strategy of the credit or financial institution.

4.2.6 Outsourcing of operational functions of the AML/CFT compliance officer

²⁴ EBA guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05; ESMA guidelines on certain aspects of the MiFID II compliance function requirements: ESMA35-36-1946; EIOPA guidelines on system of governance: EIOPA-BoS-14/253 EN



68. In addition to the ESAs guidelines on outsourcing²⁵, as applicable, and where the outsourcing of operational functions of the AML/CFT compliance officer is permitted under national law, credit or financial institutions should have regard to the following key principles:

- a. The ultimate responsibility for compliance with legal and regulatory obligations, whether or not specific functions are outsourced, lies with the credit or financial institution.
- b. The rights and obligations of the credit or financial institution and the service provider should be clearly allocated and set out in a written agreement.
- c. The credit or financial institution relying on an outsourcing arrangement should remain accountable to monitor and oversee the quality of the service provided.
- d. Intra-group outsourcing should be subject to the same regulatory framework as outsourcing to service providers outside the group²⁶.
- e. The outsourcing of functions cannot result in the delegation of the management body's responsibilities. Strategic decisions in relation to AML/CFT should not be outsourced. These decisions include, in particular:
 - i. the approval of the business-wide ML/TF risk assessment;
 - ii. the decision on the internal organisation of the AML/CFT framework of the credit and financial institution;
 - iii. the adoption of internal AML/CFT policies and procedures;
 - iv. the approval of the methodology used to determine the ML/TF risk presented by a given business relationship and the assignment of the risk profile;
 - v. the approval of the criteria to be used by the credit or financial institution to detect suspicious or unusual transactions for its ongoing monitoring and/or reporting purposes.

Credit and financial institutions remain ultimately responsible for the decision to report suspicious transactions to the FIU, including in situations where the identification and reporting of suspicious transactions is outsourced.

69. Credit and financial institutions should follow the outsourcing process, as set out in the EBA's guidelines on outsourcing arrangements, when outsourcing operational tasks of the AML/CFT compliance officer function to a service provider. This includes the identification and assessment of relevant risks of the outsourcing arrangement, the justification of the decision to outsource in light of the objectives pursued (whether it aims to ensure an optimal allocation of AML/CFT resources throughout the group or on the basis of the proportionality criteria), undertaking due diligence on the prospective service provider, and the contractualisation of the outsourcing agreement.

²⁵ EBA guidelines on outsourcing arrangements: EBA/GL/2019/02; EIOPA guidelines on outsourcing to cloud service providers: EIOPA-BoS-20-002; ESMA guidelines on outsourcing to cloud service providers: ESMA50-157-2403

²⁶ Point 27 of the Background sections of the EBA guidelines on outsourcing arrangements of 25 February 2019: EBA/GL/2019/02

70. The credit or financial institution which outsources tasks of the AML/CFT compliance function should entrust its AML/CFT compliance officer with:

- i) monitoring the service provider's performance to ensure that the outsourcing effectively enables the credit or financial institution to comply with all its legal and regulatory AML/CFT obligations;
- ii) carrying out a regular control of compliance by the service provider with the commitments arising from the agreement. In accordance with the documented analysis, the regular control should ensure that the AML/CFT compliance function is provided with means to test and monitor regularly and occasionally compliance with the obligations incumbent upon the service provider. As regards its customer's data, the AML/CFT compliance function and the competent authority should have access rights to the systems/databases of the service provider;
- iii) reporting on the outsourcing to the management body as part of the AML/CFT compliance officer's activity report or whenever circumstances require, in particular so that any necessary remediation measures are implemented as soon as possible.

71. Where the credit or financial institution does not have any officers or employees of its own other than a management body, it may outsource the AML/CFT compliance function to a service provider. In such instances the AML/CFT compliance officer should be the AML/CFT compliance officer of one of the service providers who has experience or knowledge on the type of activity or transactions carried out by the credit or financial institution.

72. In situations whereby the credit or financial institution is making use of intra-group outsourcing, it should in particular take the measures necessary to identify and manage any conflicts of interest that could arise from such an outsourcing agreement. The parent entity of the group should:

- a) ensure that an inventory of cases of intra-group AML/CFT outsourcing, in order to determine which function relates to which legal entity, is established in the concerned entities and regularly made available for its consultation; and
- b) ensure that intra-group outsourcing does not compromise the compliance of each subsidiary, branch or other form of establishment with its AML/CFT obligations.

73. The outsourcing of tasks related to AML/CFT to service providers established in third countries should be subject to additional safeguard measures in order to ensure that the outsourcing does not, as a result of the location of the service provider, increase the risk of non-compliance with the legal and regulatory requirements or of inefficient performance of the outsourced tasks, nor hinders the competent authority's capacity to effectively exercise its supervisory power with regard to the service provider.

4.3 Organisation of the AML/CFT compliance function at group level

4.3.1 General provisions on the group context

74. The credit or financial institution should adapt its internal control framework to the specificity of its business, its complexity and the associated risks, taking into account the group context.

75. The credit or financial institution should ensure that the parent undertaking, where it is a credit or financial institution, has sufficient data and information and is able to assess the group-wide ML/TF risk profile, in line with the EBA guidelines on ML/TF risk factors²⁷.

76. Where the credit or financial institution is the parent of a group, it should ensure that each management body, business line and internal unit, including each internal control function, has the information necessary to be able to carry out its duties. In particular it should ensure exchange of adequate information between the business lines and the AML/CFT compliance function, and the compliance function where those are different functions, at the group level and between the heads of the internal control functions at the group level and the management body of the credit or financial institution.

4.3.2 Role of the management body in respect of AML/CFT at group level

77. Where the parent is a credit or financial institution and thus an obliged entity under Directive (EU) 2015/849, its management body should carry out at a minimum the following tasks:

- a) in order to have a cartography of the ML/TF risks to which each group entity is exposed, ensure that the group entities perform their own business-wide ML/TF risk assessments in a coordinated way and based on a common methodology, yet reflecting their own specificities, taking into account Article 8(1) of Directive (EU) 2015/849 and the EBA revised guidelines on ML/TF risk factors²⁸;
- b) when being informed, by members of the group management body or senior manager responsible for AML/CFT or directly by the group AML/CFT compliance officer, of supervisory activities carried out in entities of the group by a competent authority, or deficiencies identified therein, ensure that remediation measures are completed by the subsidiary or branch in a timely and effective manner.

4.3.3 Organisational requirements at group level

78. When implementing group-wide policies and procedures as referred to in Article 45 of Directive (EU) 2015/849, conflicting interests, meaning ML/TF risk-generating tasks such as the commercial function, between a parent credit or financial institution, which is an obliged entity

²⁷ EBA revised guidelines on ML/TF risk factors: EBA/GL/2021/02

²⁸ EBA revised guidelines on ML/TF risk factors: EBA/GL/2021/02

under Directive (EU) 2015/849, and a subsidiary or branch, should not jeopardise the compliance with AML/CFT requirements, and should be mitigated.

79. The parent credit or financial institution should:

- a) designate a member of its management body or senior manager responsible for AML/CFT among the senior managers at the level of the parent undertaking, as well as a group AML/CFT compliance officer;
- b) set up an organisational and operational coordination structure at group level with sufficient decision-making power for the group AML/CFT management to make this position effective at managing and preventing ML/TF risks, in line with the proportionality principle and applicable domestic legislation;
- c) approve the group's internal AML/CFT policies and procedures and ensure that these are consistent with the group's structure and with the size and characteristics of the credit or financial institutions belonging to it;
- d) set up internal AML/CFT control mechanisms at group level;
- e) regularly evaluate the effectiveness of the AML/CFT policies and procedures at group level; and
- f) for a credit or financial institution that operates branches or subsidiaries domestically, or in another Member State or a third country, appoint a group AML/CFT compliance officer as a coordinator, for ensuring the implementation by all the entities of the group, which are engaged in financial activities, of the group policy and the adequate and appropriate systems and procedures for the effective prevention of ML/TF.

80. The group AML/CFT compliance officer should cooperate fully with the AML/CFT compliance officer of each entity.

81. The group AML/CFT compliance officer should have at least the following tasks:

- a) coordinate the business-wide assessment of the ML/TF risks carried out at local level by entities of the group and organise the aggregation of their results in order to have a good understanding of the nature, intensity and location of the ML/TF risks to which the group as a whole is exposed;
- b) draft a group-wide ML/TF risk assessment. In this respect, the parent entity of the group should take into account, in its ML/TF risk management system at group level, both the individual risks of the various entities of the group and their possible interrelations that could have a significant impact on the group-wide risk exposure. In this respect, particular attention should be paid to the risks to which the group's branches or subsidiaries established in third countries are exposed, especially if they are of high ML/TF risk;
- c) define group-level AML/CFT standards and ensure that local, entity-level policies and procedures comply with the AML/CFT legislation and regulations applicable to each entity of the group individually, and are also aligned to the group standards defined;
- d) coordinate the activities of the various local AML/CFT compliance officers in the group's operational entities in order to ensure that they work consistently;



- e) monitor compliance of the branches and the subsidiaries located in third countries with EU AML/CFT provisions, in particular where requirements for the prevention of ML/TF are less strict than those set out in Directive (EU) 2015/849²⁹;
- f) set group-wide policies, procedures and measures concerning, in particular, data protection and sharing of information within the group for the purposes of AML/CFT, in accordance with the national legal provisions;
- g) ensure that the entities of the group have adequate STRs procedures and share information properly, including the information that a suspicious transaction report has been filed (with no prejudice to national confidentiality rules where existing).

82. The group AML/CFT compliance officer should produce an activity report on at least an annual basis and present it to the group management body. In addition to the points mentioned in paragraph 50, the group AML/CFT compliance officer's report should contain, at least, the following points from the AML/CFT compliance officers in branches and subsidiaries:

- a) statistics consolidated at group level, especially on risk exposure and suspicious activities;
- b) monitoring of inherent risks that have occurred in one subsidiary or branch and across other subsidiaries and branches, and analysing the impact of residual risks;
- c) supervisory reviews, internal or external audits of subsidiaries or branches of the credit or financial institution including the serious weaknesses identified in the AML/CFT policies and procedures of the credit or financial institution, and the actions or recommendations for corrective measures; and
- d) information on steering and oversight of subsidiaries and branches with a special focus on the ones located in high-risk countries if applicable.

83. The AML/CFT compliance officer of a subsidiary or branch should have a direct reporting line with the group AML/CFT compliance officer.

84. The group should ensure that the policies and procedures entities put in place are aligned with the group's procedures and policies to the extent permitted under applicable national law. Based on the proportionality criteria, credit or financial institutions should, where appropriate, establish committees (including a compliance committee) of the management body in its supervisory function as set out in Section 5 of the EBA revised guidelines on internal governance³⁰.

²⁹ Please also refer to the Joint ESA Regulatory Technical Standards on the implementation of group-wide AML/CFT policies in third countries of 6 December 2017: JC 2017 25

³⁰ EBA revised guidelines on internal governance under Directive 2013/36/EU: EBA/GL/2021/05

5. Accompanying documents

5.1 Cost-benefit analysis / impact assessment

A. Introduction

1. In several provisions of Directive (EU) 2015/849 there are references to the existence of senior management in charge of the AML/CFT compliance function that is required to approve business relationships or transactions involving high-risk third countries (Article 18a(1)(e) of Directive (EU) 2015/849), cross-border relationships with a third-country respondent institution (Article 19(c) of Directive (EU) 2015/849) and transactions or business relationships with politically exposed persons (Article 20(b)(i) of Directive (EU) 2015/849), among others. Moreover, senior management should approve policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing (Article 8(5) of Directive (EU) 2015/849).

2. More specifically, Article 8(4a) of Directive (EU) 2015/849 makes reference to the appointment of a compliance officer at management level if appropriate and Article 46(4) of Directive (EU) 2015/849 requires entities to identify the member of the management body who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Level 1 text.

3. In 2017 and 2019, the European Commission issued Reports on the assessment of the risks of ML/TF affecting the internal market and relating to cross-border activities³¹ ('Supra National Risk Assessment') in which it recommended that the European Supervisory Authorities (ESAs) provide guidelines to clarify the functions of compliance officers in financial institutions³².

B. Policy objectives

4. The guidelines aim at ensuring that the provisions of the Level 1 text are interpreted and applied consistently and effectively. To this end, the guidelines describe the responsibilities at all hierarchical levels of the AML/CFT compliance function. First, the roles and responsibilities of the management body in the AML/CFT framework are set out. Second, the role of the AML/CFT compliance officer is described at all phases (i.e. the expectations about the appointment, the tasks and the reporting to the management body).

5. The guidelines also address the organisation of the AML/CFT compliance function at group level and the relationship and interactions between the AML/CFT compliance function and other functions related to the three lines of defence.

³¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0340>

³² https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf

C. Baseline scenario

6. The current EU legislative framework for credit institutions' internal governance consists mainly of Directive 2013/36/EU, the EBA guidelines on internal governance under Directive 2013/36/EU issued in 2017, the EBA draft guidelines on internal governance under Directive 2013/36/EU issued in 2020, the EBA guidelines on the assessment of the suitability of members of the management body and key function holders, and the EBA guidelines on outsourcing. The draft amended guidelines on internal governance under Directive 2013/36/EU include in the section dedicated to the compliance function the provision that credit institutions should take appropriate action against internal or external behaviour that could facilitate or enable fraud, ML/TF or other financial crime and breaches of discipline.

7. The impact assessment covers the application of the provisions included in the Level 1 text about the existence of the AML/CFT compliance officer and approval processes of senior management, and the policy options assessed during the drafting process for implementing the recommendations of the Supra National Risk Assessment reports of 2017 and 2019.

D. Options considered

8. In the process of drafting the guidelines, the ESAs considered whether to tackle the recommendation by updating EBA guidelines on internal governance or by issuing a new set of guidelines (approach for fulfilling the mandate). Other aspects, mainly related to the scope of the guidelines and the proportionality provisions, were discussed.

Approach for fulfilling the mandate

Option 1: Update guidelines on internal governance under Directive 2013/36/EU

9. The EBA guidelines on internal governance under Directive 2013/36/EU apply to credit institutions and investment firms as defined in point 3 of Article 4(1) of Regulation (EU) No 575/2013 ('CRR I'). Similarly, the guidelines are addressed to prudential supervisors, as defined in point 40 of Article 4(1) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876.

10. This option is aligned with CRR I but the scope of application of Directive (EU) 2015/849 is larger and would not be effective to address both the mandate and the effective compliance with the Directive (EU) 2015/849 provisions.



Option 2: Draft a new set of guidelines

11. Under this option, the scope of application is larger, as it will ensure the applicability of the guidelines not only to credit institutions and investment firms, but also to financial sector operators as defined in Article 4(1a) of Regulation (EU) No 1093/2010, which are credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849. Moreover, the guidelines are also applicable to competent authorities as defined in Article 4(2) (iii) of Regulation (EU) No 1093/2010.

12. This option is more aligned with the recommendation from the Commission specified in the Supra National Risk Assessment reports of 2017 and 2019, which applies to financial institutions and not only to credit institutions.

13. Option 2 is the preferred option.

Scope of the guidelines

Option 1: Provide guidelines on all aspects of the AML/CFT compliance function

14. Under this option, guidelines will be provided in relation to all aspects of the AML/CFT compliance function, including the role of the management body and the member of the management body or senior manager responsible for AML/CFT, as well as the organisation of the AML/CFT compliance function at group level. This option might appear to be more efficient for the addressees, as all the guidelines related to the AML/CFT compliance function would be accessible in a single document. Moreover, one single document ensures that financial sector operators comply with the Level 1 text, addresses the shortcomings identified in the Joint Opinion on ML/TF risks affecting the EU financial sector and fulfils the Commission's recommendation included in the Supra National Risk Assessment reports. Thus, it provides additional clarity to financial sector operators while maintaining the costs of implementation constant, as the costs of implementing a single set of guidelines and separate sets of guidelines would be the same.

Option 2: Provide guidelines only on the role of the AML/CFT compliance officer

15. This option would focus only on the aspects related to the AML/CFT compliance officer, without considering the role of the management body and the member of the management body or senior manager responsible for AML/CFT. This option is sufficient to address the recommendation of the Supra National Risk Assessment reports of 2017 and 2019. However, the EBA's guidelines should also achieve a consistent application of relevant provisions in the Level 1 text, which include several references to approval processes from senior management in charge of AML/CFT. Moreover, the 2017 Joint Opinion of the three ESAs pointed out that the most common breaches relating to inadequate controls were those about the identification and verification of financial sector operators' customers, weaknesses in the internal controls and overall AML/CFT policies and procedures and customer risk assessments.



16. Thus, Option 2 would be more focused in addressing the Commission recommendation to draft guidelines on the functions of AML/CFT compliance officers, but it would be insufficient to strengthen financial sector operators' compliance with the Level 1 text and tackle the shortcomings identified in the Joint Opinion.

17. Option 1 is the preferred option.

Proportionality

Option 1: Neutral approach

18. Under this option, guidelines regarding the AML/CFT compliance function in financial sector operators would be drafted in general terms, without considering specific situations of those financial sector operators with limited ML/TF risk or less complex business relationships and transactions.

Option 2: Provision of sufficient guidance, in line with Directive (EU) 2015/849, for the application of the proportionality principle

19. This option would include sufficient guidance to ensure that the guidelines are implemented in a proportionate manner, commensurate with the level of ML/TF risk, the size or the business model of the financial sector operator. Thus, Guideline 1 includes the first proportionality provision by prescribing the appointment of a senior manager responsible for AML/CFT where no management body is in place. Guideline 1 ensures as well that the AML/CFT policies, procedures and internal control measures are adequate and proportionate to the characteristics and the ML/TF risks. Proportionality is present in Article 8(4a) of Directive (EU) 2015/849 by envisaging, with regard to the size and nature of the business, the appointment of a separate AML/CFT compliance officer at management level. Therefore, in compliance with the Level 1 text, Guideline 2 exempts financial sector operators from the appointment of a separate AML/CFT compliance officer when the ML/TF risk is limited. However, the choice of the financial sector operators of not appointing a separate AML/CFT compliance officer does not exempt them from complying with AML/CFT obligations. Thus, the financial sector operators should allocate the related tasks to the senior manager already responsible of AML/CFT or by outsourcing certain tasks.

20. This option will ensure full alignment with the Level 1 text and with other guidelines to which these guidelines are referenced, such as the EBA guidelines on internal governance, which apply the proportionality principle in line with Article 74(2) of Directive 2013/36/EU.

21. Option 2 is the preferred option.

E. Cost-benefit analysis

22. The implementation of the guidelines entails costs and benefits for both financial sector operators and competent authorities.

23. Regarding financial sector operators, the benefits of additional guidance on the AML/CFT compliance function will increase their robustness and reduce their vulnerability towards ML/TF



risks, both as a group and on an individual level because, in a similar way to EBA guidelines on internal governance, the guidelines are applicable to both the parent entity and the subsidiaries. Thus, the parent entity can assess the group-wide risk profile. Moreover, the guidelines strengthen the level playing field, as the guidelines are not applicable only to credit institutions but also to other types of financial sector operators, as defined in Article 4(1a) of Regulation (EU) No 1093/2010. Financial sector operators will also benefit from the certainty introduced by the guidelines about the hierarchical structure of the AML/CFT compliance function, the responsibility for the appointment of the AML/CFT compliance officer, the tasks of and the subsequent reporting by the AML/CFT compliance officer to the management body, the content of the activity report that should be prepared by the AML/CFT compliance officer, the responsibility about customer acceptance policies and the reporting to the FIU of suspicious transactions, among other things. In sum, the guidelines would strengthen internal governance in relation to AML/CFT requirements and mitigate the level of ML/TF risk faced by the financial sector operators.

24. In relation to the costs faced by financial sector operators, the one-off costs are limited as financial sector operators already had to be compliant with the provisions included in Directive (EU) 2015/849 related to the existence of senior management in charge of AML/CFT issues and the obligation to have policies, controls and procedures to mitigate and manage effectively the risks of ML/TF (Article 8 of Directive (EU) 2015/849), among other things. Instead, one-off costs are related to the distribution of duties between the management body, the management body or senior manager responsible for ML/TF issues and the AML/CFT compliance officer. Other one-off costs are the provision of adequate human and material resources to the AML/CFT compliance officer in order to enable effective execution of his/her duties and the preparation of AML/CFT training if necessary. The costs faced by financial sector operators are proportionate to their size, their business activities, the complexity of their transactions and level of ML/TF risk, as some financial sector operators are exempted from the appointment of a separate AML/CFT compliance officer if it is not deemed necessary. If that is the case, they should distribute the functions among already existing roles related to AML/CFT compliance within the financial sector operator.

25. Regarding competent authorities, the benefits are related to the implementation in the EU of a harmonised hierarchical structure of the AML/CFT compliance function, particularly beneficial when performing supervisory duties. Thus, competent authorities will account with greater clarity for the tasks, the responsibilities for the preparation of the policies and procedures and reporting processes (the AML/CFT compliance officer should report to the management body via the member of the management body). Moreover, the guidelines envisage the preparation of an activity report by the AML/CFT compliance officer that can serve the competent authority in the assessment of the actions taken by the financial sector operators during the exercise. The one-off costs faced by competent authorities are expected to come from the review of the implementation of the guidelines in the first supervisory year of application while the subsequent costs are expected to come from the review of the activity report of the AML/CFT compliance officer and ensuring that it contains all the sections required by the guidelines.

5.2 Overview of questions for consultation

1. Do you have any comments on the section 'Subject matter, scope and definitions'?
2. Do you have any comments on Guideline 4.1 'Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT'?
3. Do you have any comments on Guideline 4.2 'Role and responsibilities of the AML/CFT compliance officer'?
4. Do you have any comments on Guideline 4.3 'Organisation of the AML/CFT compliance function at group level'?
5. Do you have any comments on Guideline 4.4 'Review of the AML/CFT compliance function by competent authorities'?

5.3 Views of the Banking Stakeholder Group (BSG)

On 29 July, the EBA issued a consultation on draft guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer. The proposed guidelines are new and are intended to complement existing guidelines e.g. the EBA guidelines on internal governance. The rationale for issuing new guidelines is the EBA's assessment that the requirements set out in Directive (EU) 2015/849 have been implemented unevenly across different sectors and Member States, and that they are not always applied effectively.

The BSG welcomes the opportunity to comment on the draft guidelines.

GENERAL REMARKS

The BSG underlines the importance of ensuring that it is clear for both competent authorities and regulated firms how these guidelines relate to and can be implemented coherently alongside other guidelines on internal governance and control functions. One way to do this would be to extend existing guidelines instead of creating an additional layer. Another would be to give examples of how the different guidelines interact in practice. Without this clarity, it is more difficult for financial institutions to adhere to the guidelines.

The BSG stresses that the guidelines need to cater for the different corporate governance structures that exist in the Member States. In some countries, financial institutions have a one-layer management structure. In others, e.g. in the Nordics, financial institutions have a two-layer management structure often with a Board of Directors and an executive management team responsible for running the business. Implementing the draft guidelines could create difficulties for the two-layer management structures as it would be difficult e.g. to appoint a member of the Board of Directors to the function of member of the management body responsible for AML/CFT. It would be helpful if the EBA could clarify expectations of how the guidelines would work in practice in the common models of corporate governance.

Additionally, the BSG highlights that there is a lot of focus on the responsibilities for risk identification, but not a lot of focus on the implementation of controls that align resource to risk and focus on effective management of risk. We consider that this point should come out more clearly to complement the approach proposed in the EBA's draft guidelines on a risk-based approach to AML supervision.

The BSG believes that the proposed guidelines are quite detailed and prescriptive e.g. regarding the list of information that should be included in reports (GL 4.2), but there is a lack of detail on how the AML risk management framework should work. The BSG is of the view that approaching AML processes in a task-oriented way should be avoided and that it would be preferable to adopt a more strategic and risk-led view setting up clear guidelines/orientations on the outcomes that should be achieved, in particular in relation to governance arrangements that should be in place at group level. Furthermore, a too prescriptive approach could set a precedent for other areas, leading to a more complex and cumbersome rulebook for financial institutions that may not actually be effective in all situations in delivering good AML outcomes.

We find the use of the term 'compliance' in the draft guidelines unclear. This difficulty is compounded because the term 'compliance' is often used to refer specifically to the second line of defence. The set-up in different financial institutions can differ and some tasks that are proposed as tasks of the AML/CFT compliance officer are in some financial institutions performed by the first line of defence,

while others might be at least partly performed by internal audit as part of the third line of defence. The BSG considers that the draft guidelines do not sufficiently reflect upon the differentiation of duties between the first, second and third lines of defence and this could lead to weaknesses in the framework. An example is in section D ‘Monitoring compliance’ in paragraphs 45-48: how would this fit with an internal audit function? The draft guidelines are also not fully clear about how the relationship between the general compliance function and the AML/CFT compliance function should be. Should the general compliance function have an overarching role and also monitor AML/CFT compliance? Or are these two parallel, completely separate compliance streams?

We consider that it would be helpful to reference the need for the management body and the AML/CFT compliance officer to take into account the interaction between AML and other regulatory responsibilities, particularly fair treatment of customer responsibilities, and ensure that the overall approach is coherent.

The present guidelines will in future need to be aligned with the recently proposed AML regulation, in particular Article 9 ‘Compliance Functions’.

COMMENTS ON THE SECTION ‘SUBJECT MATTER, SCOPE AND DEFINITIONS’

Scope of application

The scope of application should be more granular, for instance it should be clear what ‘*all existing management body structures*’ means for the purpose of falling within the scope of the guidelines.

The BSG considers that clarity should be given, specially where a financial services operator is part of a group, as to the type of management body structures (e.g. from a sole director to a board of directors or from dual management structures to unitary management structures) that are considered to be in the scope of application, and, on the other hand, which (if any) might be considered to be excluded (e.g. management bodies of branches, considering that these do not have legal personality). It is not clear for example whether a branch that has a management body structure should duplicate the appointments at board level (of the branch) or whether the AML/CTF compliance officer of the branch should coordinate/report directly to the group AML/CTF compliance officer, who reports directly to the member of the management body of the parent company responsible for AML/CFT.

Definitions

To interpret the guidelines correctly, consideration should be given to including the following definitions while allowing for the difference in corporate governance structures described above:

- member of the management body responsible for AML/CFT;
- senior manager in charge of AML/CFT;
- AML/CFT compliance officer;
- group AML/CFT compliance officer;
- member of the group management body or senior manager responsible for AML/CFT;
- organisational and operational coordination structure at group level with sufficient decision-making power for the group AML/CFT management.

Alternatively, it would be beneficial to provide some clear examples and best practices as to how these persons should fit in the organisation, at least in the most common corporate governance

structures currently operating in the EU.

Interaction with other guidelines

Given that these guidelines complement, but do not replace, very relevant guidelines issued by the European Supervisory Authorities on wider governance arrangements and suitability checks, specific cross-references should be provided to be clear as to how they interplay with the current guidelines on the role of the AML/CFT compliance officer following a single rulebook style.

COMMENTS ON GUIDELINE 4.1 'ROLE AND RESPONSIBILITIES OF THE MANAGEMENT BODY IN THE AML/CFT FRAMEWORK AND OF THE SENIOR MANAGER RESPONSIBLE FOR AML/CFT'

Regarding section 4.1, the BSG considers that the guidelines need to cater for two-layer management structures that exist in the corporate governance structure in e.g. the Nordics. It is essential to clarify whether the management body in which a member shall be appointed with responsibility for AML/CFT can be interpreted as the management leadership team and not the Board of Directors.

Likewise, one-tier management structures where the management body is conceived as one unique and inseparable body through which all functions are performed collectively would require specific mention in the EBA guidelines, related to the fact that the individual allocation of responsibilities to the management body can be only implemented if they are appropriately delegated to members of the senior management.

Additionally, it would be helpful to state more explicitly that the key responsibility of the management body is to assure itself about the effectiveness of controls in place.

In relation to the EBA's finding (reported in its 2019/2020 AML/CFT review of competent authorities' approaches to the AML/CFT supervision of banks) that AML/CFT supervisors in some Member States did not interact with financial institutions' senior management because there was no legal or regulatory requirement in those Member States to appoint an AML/CFT compliance officer at a level that was sufficiently senior to report to the financial institution's senior management body, no orientation is given as to how to address this important issue in the interests of supervisory convergence. Therefore, we consider that more clarity should be given as to what person (if any), and at what level (e.g. management level, the AML/CFT compliance officer or the group AML/CFT compliance officer), should be the person appointed/registered with the competent authority and for what purposes (reporting, contact point, etc.).

One aspect that remains important and is linked to the previous point is to clearly identify who in the organisation is ultimately responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2015/849, in particular when the financial operator is part of a group. In our opinion, the management body should bear this responsibility, but guidelines are needed in this respect, to explain that the responsibility sits in fact with them and not with the AML/CFT compliance officer (e.g. paragraph 29 of the guidelines might create confusion regarding this point).

COMMENTS ON GUIDELINE 4.2 'ROLE AND RESPONSIBILITIES OF THE AML/CFT COMPLIANCE OFFICER'

On section 4.2.4 'Role and responsibilities of the AML/CFT compliance officer', the BSG notes that the tasks as drafted in section 4.2.4, e.g. developing ML/TF risk assessments, preparing policies and assessing training needs, could be performed by the first line of defence. In the BSG's view, it should be possible for a financial institution to set up their internal working methods, fully respecting the important task of the second line of defence (what the BSG would refer to as the 'compliance' function). Thus, the guidelines would need to allow for more flexibility in this respect.

Regarding the reporting to the management body, the BSG agrees as to the importance of such reporting and finds the list of information to be included in the activity report highly useful. However, the current drafting of the guideline is very detailed and prescriptive. This approach risks creating a tick-the-box approach to compliance. It should be possible for financial institutions and the respective management bodies to arrange their internal reporting more freely and in a way that is commensurate with their risk as long as the institution fulfils the requirements to fully understand and manage the ML/TF risks they are subject to. Moreover, as mentioned in the section above, some of the reporting may be performed by the first line of defence as described depending on the organisational set-up of the financial institution.

On 4.2.4 c) concerning customers including high-risk customers, the BSG takes the view that CDD policies and procedures could be prepared by the first line of defence although review and sign-off by the AML compliance function would be important. Moreover, while it is important to have clear decision-making policies and procedures for onboarding high-risk customers in line with the risk appetite of the financial institutions at a sufficiently high level in senior management, a requirement to have the AML/CFT compliance officer exercise an advisory role before a final decision is taken by senior management on onboarding each new high-risk customer could create an unnecessarily complex decision-making process, particularly in large financial institutions. Consideration should be given to ways of ensuring that this requirement can be implemented effectively in institutions of different sizes and complexity.

As mentioned before, there is a lot of focus on the responsibilities for risk identification, but not a lot of focus on the implementation of controls that align resource to risk and focus on effective management of risk. As an example, the BSG suggests adding into the description of compliance officer responsibilities in paras 43-44 a responsibility to ensure that simplified customer due diligence is used for lower-risk customer groups, as well as enhanced due diligence where appropriate. This would ensure a proportionate approach and avoid harming access to financial services and financial inclusion through 'over-compliance'.

The AML/CFT compliance officer should be provided with a 'name' or specific 'designation' (e.g. as the MLRO in the UK) in order to clearly differentiate this person from the member of the management body or the senior manager responsible for AML/CFT or from the compliance officer when the AML/CFT compliance officer is a different person. Otherwise, it might not be clear who is who and responsibilities might be blurred.

COMMENTS ON GUIDELINE 4.3 'ORGANISATION OF THE AML/CFT COMPLIANCE FUNCTION AT GROUP LEVEL'

On paragraph 4.3.3, the BSG reiterates the comment that the management body and the

requirement to designate a member of the group management body or senior manager responsible for the AML/CFT compliance function needs to cater for those financial institutions that have two-layer corporate governance structures and that the management body does not mean the Board of Directors.

Regarding the tasks and reporting of the group AML/CFT compliance officer, the guidelines should be amended to cater for the different organisational set-ups of financial institutions, where some may have divided certain tasks between the first, second and third line of defence.

As mentioned before, clear examples of good and bad practices built on supervisory experience should help financial services operators to identify how the governance arrangements and organisational requirements should work in practice (in terms of coordination, reporting, etc.) and what outcomes are expected from them.

Finally, it might be useful to understand how these guidelines interplay with the forthcoming EBA guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units.

COMMENTS ON GUIDELINE 4.4 ‘REVIEW OF THE AML/CFT COMPLIANCE FUNCTION BY COMPETENT AUTHORITIES’

The BSG believes that the content of this section is too narrow. While the suitability of the individual AML/CFT compliance officer is important, it is insufficient to provide a view of the effectiveness of the AML compliance function. The BSG is of the view that the AML/CFT compliance officer’s ability to deliver effective function will also depend significantly on support received from the management body and resource allocated as much as individual competence.

Furthermore, it would be useful to have some examples of good and bad practices identified in the past when reviewing the conditions relating to integrity, expertise and knowledge of the legal and regulatory AML/CFT framework that the AML/CFT compliance officer or the group AML/CFT compliance officer should meet.

DETAILED POINTS

- Page 22, para 28: ‘local’ to whom? Does this refer to the place where the regulated firm is established or the location of the AML compliance officer? Para 30: ‘independent’ reporting line – independent of whom? Do we mean ‘direct’, ‘unmediated’?
- Page 37, para 82: need to mention the ‘AML risk profile’ of the regulated firm too. Para 83: add ‘and vice versa’.
- Page 38, para 84: c) and d) need to emphasise the importance of ‘effectiveness’, not just ‘consistency’.
- Para 86: ‘direct reporting line for communication’... what does this mean? Again, is it a direct line of communication (we agree that this is important, but not the same as a reporting line).

5.4 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal.

The consultation period lasted for three months and ended on 2 November 2021. Thirty-six responses were received. Twenty-nine non-confidential submissions were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if necessary.

In some cases several respondents made similar comments or the same respondent repeated their comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

Respondents to the public consultation welcomed the guidelines. They considered that such guidance addressed to credit or financial institutions and their competent authorities is critical to achieving consistency across Member States, thereby strengthening AML/CFT defences.

Where respondents raised concerns on the draft guidelines, these related to the following key issues:

1. **The legal basis of the draft guidelines and alignment with the European Commission's AML package under consultation:** Several respondents questioned whether and how the draft guidelines would be aligned to provisions in the European Commission's AML package, which was published on 20 July 2021 and is currently being negotiated. In particular, Article 9 of the draft EU Regulation on AML/CFT will provide for the appointment of a 'compliance manager' as well as a 'compliance officer'.

The AML package is not yet in force and cannot therefore provide a legal basis for EBA guidelines. Furthermore, the AML package is still being negotiated and provisions may therefore change. For this reason, the EBA decided that the final guidelines will not anticipate future developments and instead remain aligned with the current legal framework and, in particular, provisions of Directive (EU) 2015/849.

2. **The extent to which financial institutions with different governance models can comply with these guidelines:** Several respondents indicated that there is a variety of different financial institutions, in size, importance and internal governance models, which will comply with these



guidelines. The draft guidelines therefore need to take into consideration that corporate governance models of financial institutions differ, sometimes significantly, between Member States. The draft guidelines will need to cater for all of these models.

The EBA, in consultation with the EBA's internal governance experts, concluded that the draft guidelines should not advocate for any specific governance structure or organisational set-up of financial institutions. The EBA updated the guidelines to make this point clear.

- 3. Drafting style, length and level of detail provided by the guidelines:** Most respondents considered that the draft guidelines were too prescriptive. In their view, the level of detail provided risked leading to a tick-box approach by credit and financial institutions, rather than a risk-based approach. They also considered that very detailed guidelines would set a precedent for other areas of the EBA's work, leading to a complex and lengthy rulebook for financial institutions. Lastly, several respondents considered that the level of operational details on the roles and responsibilities of the AML compliance officer was not proportionate to his/her level of hierarchy in the financial institution.

The EBA took note of those concerns and reviewed and amended the guidelines on that basis.

Lastly, as announced in the consultation paper, the initial section 4.4. *Review of the AML/CFT compliance function by competent authorities* was removed from these guidelines and was incorporated in the revised Risk-based Supervision Guidelines (EBA/GL/2021/16), published on 16 December 2021. Responses received on this specific section were taken on board when finalising EBA/GL/2021/16.

Summary of responses to the consultation and the EBA's analysis

Feedback on responses to Question 1: Do you have any comments on the section 'Subject matter, scope and definitions'?			
Guideline	Summary of responses received	EBA analysis	Amendments to the proposal
Section 'Subject matter, scope and definitions'	Respondents asked to replace the term 'financial sector operator' throughout the guidelines with 'credit and financial institution' in line with the terms used in Directive (EU) 2015/849 and with the EBA guidelines on ML/TF risk factors.	This change has been accepted. The final guidelines will refer to 'credit and financial institutions', and references will be adjusted accordingly throughout the document.	Changed all reference from 'financial sector operator' to 'credit and financial institution'.
Section 'Subject matter, scope and definitions', paragraph 6	Some respondents requested clarifications as to whether the guidelines would apply to branches of financial institutions which, by definition, do not have a legal personality.	The guidelines apply to all credit or financial institutions which are obliged entities under Directive (EU) 2015/849.	None
Section 'Subject matter, scope and definitions', paragraph 7	Two respondents requested adding clarifying language which would explain that the guidelines apply to the extent that they do not contradict with national legislation.	The guidelines aim to achieve harmonisation on the EU level. All institutions and all their subsidiaries have to comply with the applicable Union and national legal requirements without this fact being stated in guidelines. This being said, a sentence has been added to the section 'Subject matter, scope and definitions'.	Change inserted in paragraph 7 referring to 'in accordance with national law' in order to respond to these comments.
Section 'Subject matter, scope and definitions', paragraph 6	Several respondents, including the BSG, pointed out that the guidelines need to take into consideration the fact that corporate governance models of credit or financial institutions differ, sometimes significantly, between Member States. The guidelines will need to cater for all of these models.	The guidelines should not advocate for any specific governance structure or organisational set-up of financial institutions. Specific language has been inserted under paragraph 6 of the guidelines in line with the EBA's guidelines on internal governance, as adopted on 2 July 2021.	Changes inserted in paragraph 6 (in line with EBA revised guidelines on internal governance) respond to these comments.
Section 'Subject matter, scope and definitions', paragraph 9	Several respondents suggested adding additional definitions to the guidance, including the 'AML/CFT compliance officer' and 'senior management'. In addition, two respondents requested amending the definition of 'management body'.	Definitions included in Directive (EU) 2015/849 apply to the terms used in the guidelines (such as credit institutions, financial institutions, senior management). In addition, the definition of the 'management body' was inspired by Directive 2013/36/EU (CRD IV), as also referred to in the EBA's guidelines on internal governance.	None

		Finally, no definition was added under this section on the AML/CFT compliance officer because this is the subject matter of these guidelines.	
<p>Feedback on responses to Question 2: Do you have any comments on Guideline 4.1. ‘Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT’?</p>			
Guideline	Summary of responses received	EBA analysis	Amendments to the proposal
Guideline 4.1.1. ‘Approval of the policies, controls and procedures’	Five respondents questioned why the guidelines refer to the approval of policies, controls and procedures by the ‘management body’ instead of the ‘senior manager’ which would be coherent with the language of Directive (EU) 2015/849.	Directive (EU) 2015/849, under its Article 8(5), requires entities to ‘obtain approval from their senior management for the policies, controls and procedures that they put in place and to monitor and enhance the measures taken, where appropriate.’ There was no consensus to refer to the ‘management body’ (instead of ‘senior management’) in the guidelines for such approval. In order to avoid a pure repetition of Directive (EU) 2015/849 language the whole section was subsequently deleted from the final version of the guidelines.	Deletion of the initial section 4.1.1. ‘Approval of the policies, controls and procedures’
Guideline 4.1.2. ‘Role of the management body in its supervisory function’, paragraph 13.	One respondent indicated that the management body in its supervisory function is not responsible for setting nor approving an adequate and effective internal governance and internal control framework to ensure compliance with AML/CFT requirements. Its function is to ensure and assess the effectiveness of such a framework.	CRD Article 88 requires ‘[Member States to ensure] that the management body defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of an institution.’ On that basis, agreement with the suggestion.	Change introduced in paragraph 13.
Guideline 4.1.2. ‘Role of the management body in its supervisory function’, paragraph 11.	Some respondents questioned how the management body would be able to ‘collectively possess adequate knowledge, skills’ in general, and such collective knowledge ‘to understand the ML/TF risks’ in particular given the specificities of the AML/CFT field.	Collective knowledge is foreseen under CRD and further specified in the joint ESMA and EBA fit and proper guidelines. The collective knowledge means that the management body should have collectively the knowledge and skills to understand the AML-CFT framework. It does not mean that each individual member of the management body should be an expert in all subject areas such as AML/CFT.	None

Guideline 4.1.2 (impact on guideline 4.2.4 too)	One respondent systematically disagreed with allocation of the responsibility of the management body to 'implement' AML/CFT related policies given that they consider this to be a very operational task. They propose replacing it with the responsibility to 'oversee the adequacy and efficiency of the internal governance and control framework to ensure compliance with AML/CFT requirements'.	The management body, in its management function, is responsible for ensuring implementation of the AML/CFT policies and procedures. The day-to-day, operational implementation of such policies lies with the AML/CFT compliance officer, where appointed.	Changes introduced in paragraphs 12, 13, 16 and 41.
Guideline 4.1.3	Some respondents challenged that the appointment of a member of the management body responsible for AML/CTF is <u>not</u> mandatory, especially if it is not required by national law. They argued that the 'proportionality' criteria should apply to this appointment.	There needs to be an appointment of a member of the management body, or, in the case of the absence of a management body, at a senior management level, who will be responsible for AML/CFT. The person would be the main contact in the financial institutions vis-à-vis the national competent authority.	None
Guideline 4.1.3	Some respondents suggested, in relation to the member of the management body referred to in section 4.1.3 or, where applicable, the senior manager referred to in section 4.1.4, that the requirement, under paragraph 14 a), indicating that this person should 'have adequate knowledge, skills and experience regarding the identification, assessment and management of the ML/TF risks' should be eased and replaced by 'has adequate knowledge regarding the ML/TF risks'.	The requirement of 'knowledge, skills and experience' is aligned to the joint ESMA and EBA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2021/06). Therefore, consistency should be ensured.	None
Guideline 4.1.2, 16 a) and paragraph 20	One respondent proposed to stress, throughout the guidelines, that the AML/CFT compliance officer should be allocated not only adequate resources, but equally his/her <i>authority</i> within the business e.g. access to staff and information.	The reference to 'authority' has been inserted throughout the guidelines.	Changes introduced to insert the word 'authority' in paragraphs 16, 19, 20 and 25.
Guideline 4.1.2, paragraph 16 b)	At least three respondents indicated that the 'implementation' of policies is not the responsibility of the management body in its management function, which rather bears the responsibility for 'the <i>adequacy and effectiveness</i> of the internal AML/CFT policies and procedures'.	The implementation of AML/CFT policies is the responsibility of the management body in its management function while the management body in its <u>supervisory</u> function is in charge of overseeing and monitoring management decision-making and actions and providing effective oversight of the management body in its management function in line with the EBA's guidelines on internal governance. See also interconnected comment under section 4.1.1 above.	Editorial changes were introduced to paragraph 16 to reinforce the EBA's views.

Guideline 4.1.2, paragraph 16 c)	One respondent questioned whether the management body should <i>approve</i> the AML/CFT compliance officer's annual activity report, or should 'be informed /acknowledge receipt' in relation to it. These respondents indicated that requiring 'approval' may interfere in the independence of the AML/CFT compliance officer.	The 'approval' of the AML/CFT compliance officer's report would include the possibility of 'rejecting' the report, which could undermine the AML/CFT compliance officer's independence. The EBA accepts the point raised. However, the mere 'acknowledgment of the receipt' of such a report would not be sufficient, it should be given consideration by the management body.	Change from 'approval' to 'review' the activity report
Guideline 4.1.2, paragraph 16 e)	A couple of respondents indicated that the EBA guidelines on outsourcing arrangements do not require that the management body approve individual service providers. As these respondents pointed out, the EBA outsourcing guidelines referred to provide that the management body should approve, regularly review and update a written outsourcing policy and ensure its implementation.	This section has been clarified.	Change made in 16 e) by deleting the requirement of the management body to 'approve the service provider'.
Guideline 4.1.3, paragraph 17	Some respondents argued that in certain governance models (i.e. one-tier systems) whereby the management body is conceived as one, inseparable collegial body, it is not feasible to appoint one single person as responsible for AML/CFT.	The EBA notes that the same argument was already put forward during the public consultation on the revision of the EBA's guidelines on internal governance, published in July 2021 ³³ . In that context, it had already been clarified that appointing one person as AML/CFT responsible is operationally feasible and this is without prejudice to the responsibility of the management body as a collegial body.	None
Guideline 4.1.3, paragraph 17	Several respondents challenged that in financial institutions with one-tier governance systems the designated member of the management body in its management function responsible for AML/CFT will be the CEO himself/herself. Therefore, in such cases, the CEO would not possess the required experience and skill regarding AML/CFT and therefore expectations described under paragraph 17 are unrealistic.	The guidelines are applicable to one-tier governance systems. If the management body in its management function is composed only of the CEO, the CEO should be the person appointed under section 4.1.3.	Paragraph 17 has been slightly reworded to clarify expectations.
<p>Feedback on responses to Question 3: Do you have any comments on Guideline 4.2. 'Role and responsibilities of the AML/CFT compliance officer'?</p>			

³³ Final Report on guidelines on internal governance under Directive 2013/36/EU, accessible here:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/1016721/Final%20report%20on%20Guidelines%20on%20internal%20governance%20under%20CRD.pdf

Guideline	Summary of responses received	EBA analysis	Amendments to the proposal
Guideline 4.2, paragraph 24	Some respondents indicated that the guidelines should focus on the AML/CTF compliance <u>function</u> specifying its tasks and responsibilities and establishing that an AML/CTF compliance officer responsible for the function shall be appointed. Consequently, these respondents suggested referring, systematically, to the 'AML/CTF compliance function' instead of the 'AML/CTF compliance officer'. They believed this would also be consistent with the forthcoming draft EU AML/CFT regulation, which is part of the European Commission's AML/CFT package, still under negotiations as of May 2022.	The guidelines are based on Directive (EU) 2015/849 and therefore should be aligned to Directive (EU) 2015/849 language. See also section 5.4. of the Final report for further clarification.	None
Guideline 4.2, paragraph 28	Lots of respondents reacted to the mention that the AML/CFT compliance officer should 'normally be located and work in the country in which the credit or financial institution is established'. These respondents, who request introducing more flexibility in this specific guideline, made reference to 1. the specific COVID19-context (which has brought a more generalised manner of working from home – as opposed to working in physical offices) but also to 2. the potential outsourcing arrangements that may be in place for the financial institution which would not necessarily require physical presence of the service provider in the same country as the credit or financial institution.	The intention of this paragraph is not to prescribe where the AML/CFT compliance officer should be living but note that certain national legislation may require, for instance, that the compliance officer in charge of filing STRs be located in the same country as the financial institution. Also, the majority of the national regulators require that such a compliance officer, whose name is reported to national competent authorities, be 'available' upon request from the regulator and therefore should be localised in a limited distance from the financial institution's offices. In addition, paragraph 28 should be read together with paragraph 29 of the guidelines.	Change introduced in paragraph 28 replacing the word 'located' to 'contracted and work'.
Guideline 4.2.2	At least two respondents questioned the meaning of the word 'separate' AML/CFT compliance officer, as used throughout section 4.2.2.	The word 'separate' refers to 'different from the member of the management body responsible for AML/CFT' (section 4.1.3) or the senior manager responsible for AML/CFT where no management body is in place (section 4.1.4). Appointment of a 'separate' AML/CFT compliance officer should be based on the proportionality criteria as set out in section 4.2.2.	None
Guideline 4.2.2, paragraph 35	One respondent questioned the requirement that an AML/CFT compliance officer, when acting for two or more entities as a compliance officer, could work <i>only</i> for entities that belong to the same group and proposed deleting such a restriction from the guidelines.	The EBA is of the view that if an AML/CFT compliance officer is fulfilling such a position in several entities at the same time, it is important that those entities belong to the same group as he/she will need to carry out the work in an efficient manner; in the context of a group, the same group policy is to be applied in the different entities. In addition, some Member States' specific	None

		experience shows that such a restriction improves the quality of the AML/CFT compliance offer.	
Guideline 4.2.2, paragraph 35	Some respondents requested adding a definition of the collective investment funds in the guidelines.	Definition was added.	Footnote inserted to paragraph 35 with the definition.
Guideline 4.2.3, paragraph 36 a)	One respondent strongly requested the EBA to refrain from using the term key function holder when referencing to the AML/CFT compliance officer.	Agreement to delete such a reference and focus paragraph 36 a) on the fit and proper criteria, which is the key message of that paragraph.	Deletion of the term 'key function holder' from paragraph 36 a)
Guideline 4.2.4, paragraph 43	Several respondents required clarification as to whether the AML/CFT compliance officer's advisory role should be <i>systematically</i> required for high-risk customers upon onboarding and reclassification, or should the AML/CFT compliance officer's advice be risk-sensitive and thus non-systematic for high-risk customers.	It was clarified that the AML/CFT compliance officer should be consulted, as a minimum, in situations whereby Directive (EU) 2015/849 explicitly requires the approval of a senior management: business relationships involving high-risk countries (Art. 18a (e)), or with politically exposed persons, PEPs (Art. 20 (b) i)) and new cross-border correspondent relationships (Art. 19(c)). In addition, the AML/CFT compliance officer should be consulted in other high-risk situations in line with the credit and financial institution's risk-based internal policies.	Change introduced in paragraph 43.
Guideline 4.2.4, paragraphs 44-46	One respondent indicated that the specific section d) on monitoring compliance was not entirely aligned to the three lines of business model.	This section was clarified and further aligned to the EBA's guidelines on internal governance, published on 2 July 2021.	Changes introduced in paragraphs 44-46.
Guideline 4.2.2, paragraph 48 c)	One respondent requested clarifications on what the EBA means by 'remedial programme'.	'Remedial programme' concerns programmes which aim to remedy/resolve the deficiencies identified in the functioning of the AML/CFT framework of the institution.	None
Guideline 4.2.2, paragraph 50.	A large number of respondents reacted to paragraph 50 which provides a non-comprehensive list of information which should be included in the activity report of the AML/CFT compliance officer. Respondents indicated that this section was far too long and prescriptive, and thus puts a significant burden on the AML/CFT compliance officer. They requested simplifying it. In addition, it was requested to clarify that the activity report is an annual report.	This specific part of the guidelines has been significantly revised and shortened.	Changes introduced in paragraph 50 and clarified that it is an annual report.

Guideline 4.2.4, paragraph 56	Some respondents indicated that AML/CFT compliance officer does not necessarily have to train the staff himself/herself, but can delegate this task. They requested to acknowledge this in the guidelines. More generally, several respondents requested clarifications that the AML/CFT compliance officer does not perform the listed tasks on his/her own, but can be helped by employees working in the AML/CFT compliance unit or function.	The AML/CFT compliance officer will not need to be personally involved in each training, and this is already reflected in the choice of the term 'oversee' (and not 'deliver') in paragraph 56. More generally, the AML/CFT compliance officer can have dedicated staff/employees working under his/her direction. In that regard, paragraph 16 a) explicitly makes reference to a 'dedicated AML/CFT unit to assist the AML/CFT compliance officer'.	None
Guideline 4.2.4, paragraph 58 c)	One respondent indicated that the guidelines should not prescribe the necessity to train IT developers and IT operational personnel as they do not have any customer contact and will not be monitoring transactions or similar, and are therefore highly unlikely to detect suspicious activity.	Agreement for deleting the requirement to train IT software developers for AML/CFT purposes unless their activity is captured under the other points 58 a) or 58 b).	Change introduced in paragraph 58 c).
Guideline 4.2.5.	One respondent requested to consider the incorporation of guidelines for the activities of the internal audit function which is currently not captured by this consultation paper.	The current guidelines do not have a mandate to detail the responsibilities and activities of the internal audit function. Please refer to the EBA's guidelines on internal governance, published on 2 July 2021.	Initial paragraph 63 deleted from the guidelines.
Guideline 4.2.6, paragraph 68	A large number of respondents challenged the list of non-outsourcable strategic decisions as indicated in paragraph 68. Several respondents also questioned the principle that intra-group outsourcing should be subject to the same regulatory framework as outsourcing to service providers outside the group. They argue that outsourcing outside of a group bears higher risk (e.g. operational risk).	The ESAs guidelines on outsourcing set out key principles of the outsourcing arrangements which remain valid in the context of the outsourcing of operational functions of the AML/CFT compliance officer. The guidelines have been further clarified.	Change introduced in paragraph 68.
Guideline 4.2.6, paragraph 72 a)	One respondent specifically requested that the inventory of intra-group AML/CFT outsourcing should be established and kept by the concerned entity which is outsourcing (as opposed to the parent company). This is to ease the burden on the parent entity.	Agreement that the inventory of intra-group AML/CFT outsourcing should be kept by the outsourcing entity, as this thinking is also aligned with the principle that the responsibility of outsourcing remains with the entity. Such an inventory should be made available to the parent company for its consultation.	Change introduced in paragraph 72 a).
<p>Feedback on responses to Question 4: Do you have any comments on Guideline 4.3. 'Organisation of the AML/CFT compliance function at group level'?</p>			

Guideline	Summary of responses received	EBA analysis	Amendments to the proposal
Guideline 4.3	Several respondents requested clarification on how the whole of section 4.3 of the guidelines would be applicable to cross-border groups whereby the parent entity is not an obliged entity under Directive (EU) 2015/849 either because of the parent entity's legal form (e.g. holding company) or because the parent entity is established in a third country outside Europe.	These guidelines are based on Directive (EU) 2015/849. It was therefore clarified that where a parent company is not an obliged entity under Directive (EU) 2015/849, section 4.3 should not be applicable to the parent entity (note, however, that branches and subsidiaries of such a parent entity which are themselves obliged entities, if located in the Member States, should be compliant with other sections of these guidelines).	Change introduced in paragraph 77 to make the scope of application explicit and clear.
Guideline 4.3.2, paragraph 77	One respondent requested clarifications on how the cartography of risks exercise at a group level should be coordinated with the individual entities' risk assessments.	It is the responsibility of the individual entities to perform their own AML/CFT risk assessments, but the parent entity's responsibility to provide a consistent methodology.	Change introduced to paragraph 77.
Guideline 4.3.3, paragraph 79 a)	One respondent requested clarification as to whether, in banking groups where the AML/CFT function is outsourced to the parent company, the member of the management body responsible for AML/CFT should be appointed only at the parent company level or in each entity of the group, both located in the same Member State as the parent company or in another Member State / third countries, including non-banking entities subject to AML/CFT regulation.	There needs to be a designation of a member of the management body responsible for AML/CFT in every subsidiary/entity of the group. An AML/CFT responsible at the group level is not sufficient. This requirement is also coherent with section 4.1 of these guidelines.	None
Guideline 4.3.3, paragraph 79	Three respondents requested clarifications on what is meant by 'group management body'.	It was clarified that 'group management body' refers to the 'management body of the parent company'.	Rewording of paragraph 79
Guideline 4.3.3, paragraph 81	One respondent proposed to add a requirement, in the list of tasks of the group AML/CFT compliance officer under paragraph 81, that the group AML/CFT compliance officer should be involved in the recruitment and/or replacement of the AML/CFT compliance officers in the entities of the group.	The systematic involvement of the group-level AML/CFT compliance officer in the designation of AML/CFT compliance officers of the group entities is not a Directive (EU) 2015/849 requirement and may pose several implementation issues such as: the shift of responsibility for the selection of the candidate from the entity toward the group; legal issues around the contractualisation of the employment; and, in cases of bigger financial institutions with a large number of entities in the group, operational/resource issues for the group AML/CFT compliance officer to find time to allocate to this task.	None

Guideline 4.3.3, paragraph 82	Several respondents indicated that the list of elements to be included in the activity report of the group AML/CFT compliance officer, as described under paragraph 82, is excessive, too prescriptive and detailed, and sometimes 'create confusion' between the tasks of the first and second lines of defence.	As was the case with paragraph 50 on the activity report of the AML/CFT compliance officer, this specific part of the guidelines has been significantly revised and shortened.	Changes introduced in paragraph 82 and clarified that it is an annual report.
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Feedback on responses to Question 5: Do you have any comments on Guideline 4.4. 'Review of the AML/CFT compliance function by competent authorities'?

Note: responses received on this specific question were taken on board when finalising the revised Risk-based Supervision Guidelines (EBA/GL/2021/16), published on 16 December 2021.