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8 November 2018

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# Consultation Paper

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Draft joint guidelines on the cooperation and information exchange for the purposes of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (“The AML Colleges Guidelines”)



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# 1. Responding to this consultation

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The European Supervisory Authorities (the ESAs) invite comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 4.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the ESAs should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 8 February 2019. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the ESAs' rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the ESAs' Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the ESAs in their implementing rules adopted by their Management Boards. Further information on data protection can be found under the Legal notice section of the ESAs' website.

## 2. Executive Summary

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Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing aims, inter alia, at bringing European Union legislation in line with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation that the FATF, an international AML/CFT standard setter, had adopted in 2012. While the FATF Recommendations are explicit that the cooperation of those authorities responsible for overseeing AML/CFT compliance is an essential part of an effective AML/CFT regime,<sup>1</sup> Directive (EU) 2015/849 set out only a high-level requirement for competent authorities of home and host Member States to cooperate without setting out in detail how this cooperation should happen.

The Commission, Council and Parliament have now addressed this shortcoming by amending Directive (EU) 2015/849 so as explicitly to require in Article 50a and 57a for EU Member States not to prohibit or unreasonably restrict the exchange of information or cooperation between competent authorities for AML/CFT supervision purposes. It has also clarified the legal basis for the cooperation and information exchange between competent authorities in different EU Member States. However, the revised Directive does not set out in detail how this should be achieved. The three ESAs are therefore proposing Guidelines to clarify the modalities of supervisory cooperation and information exchange, and to create a framework that supervisors should use to support the effective AML/CFT supervision of firms that operate on a cross-border basis.

With these Guidelines, the ESAs are proposing that cooperation and information exchange between competent authorities can be improved through AML/CFT colleges and these Guidelines set out the rules that govern the establishment and operation of these colleges. These guidelines provide that all competent authorities should carry out a mapping exercise of all firms under their supervision to identify those firms that require an AML/CFT college to be set up. These colleges provide competent authorities, which are responsible for the supervision of the same firm in different jurisdictions, with a forum for the cooperation and information exchange. In that way competent authorities can improve their understanding of the ML/TF risk associated with that firm, exchange information to inform their approach to AML/CFT supervision of that firm and to coordinate supervisory action where appropriate.

In situations where a firm does not require a college to be set up, because it operates only in two member states, the guidelines have defined the process for bilateral exchanges of information between competent authorities as there is evidence to suggest that the absence of a formal framework has hampered bilateral exchanges in a number of cases.

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<sup>1</sup> See in Particular Recommendation 40 and the associated 'Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems': <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>.



These guidelines also emphasise the need for information exchange between the competent authorities and prudential supervisors, particularly the exchange of information between AML/CFT and prudential colleges.

## 3. Background and rationale

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### Background

1. On 26 June 2015, Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing entered into force. This Directive aims, inter alia, at bringing European Union legislation in line with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation that the FATF, an international AML/CFT standard setter, had adopted in 2012.
2. The FATF Recommendations are explicit that the cooperation of those authorities responsible for overseeing AML/CFT compliance is an essential part of an effective AML/CFT regime.<sup>2</sup> Consequently, Directive (EU) 2015/849 requires competent authorities of home and host Member States to cooperate to ensure the effective AML/CFT supervision of obliged entities that operate on a cross-border basis.
3. However, in contrast to other EU legal texts that govern working relationships between competent authorities from different Member States, Directive (EU) 2015/849 does not set out in detail how competent authorities should cooperate. There have been indications that the absence of detailed provisions in Directive (EU) 2015/849, together with the lack of specific references to cooperation and information exchange for AML/CFT supervision purposes in most other EU legal texts, prevents effective cooperation between national competent authorities, including the ability to exchange information. This is why the Commission, Council and Parliament have amended Directive (EU) 2015/849 so as explicitly to require in Article 50a and 57a for EU Member States not to prohibit or unreasonably restrict the exchange of information or cooperation between competent authorities for AML/CFT supervision purposes. It has also clarified the legal basis for the cooperation and information exchange between competent authorities in different EU Member States.
4. However, the revised Directive does not set out in detail how this should be achieved. The three ESAs are therefore proposing Guidelines to clarify the modalities of supervisory cooperation and information exchange, and to create a framework that supervisors should use to support the effective AML/CFT supervision of firms that operate on a cross-border basis.
5. Specifically, the guidelines proposed in this consultation paper:
  - a) set out the rules for the establishment of AML/CFT colleges for firms operating on a cross border basis which will provide a forum for AML/CFT competent authorities responsible for supervising these firms in different Member States to work together to improve their understanding of the ML/TF risk associated with

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<sup>2</sup> See in Particular Recommendation 40 and the associated 'Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems': <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>.

the firm, exchange information to inform their approach to AML/CFT supervision of that firm and to coordinate supervisory action where appropriate; and

- b) define the process for bilateral exchanges of information between competent authorities as there is evidence to suggest that the absence of a formal framework has hampered bilateral exchanges in a number of cases. The remainder of this chapter provides a reasoning for each of the proposed Guidelines.

## Rationale

6. The Guidelines proposed in this consultation paper cover the following issue areas: the mapping of firms, the conditions for establishing an AML/CFT college, maintaining the college, converting existing colleges into AML/CFT colleges, their composition, their meetings, cooperation agreements, contact lists, and other related aspects.

### Mapping of firms

7. These Guidelines aim to foster the cooperation and information exchange between the competent authorities that are responsible for supervising the same firm, or parts of that firm, through AML/CFT colleges. For these colleges to be set up, competent authorities first need to ascertain which firms under their supervision would meet the qualifying criteria for an AML college. Guideline 1 therefore proposes to require competent authorities to map firms under their supervision. As part of this mapping exercise, the competent authorities should identify all firms that have been authorised in their jurisdiction and all branches or subsidiaries set up by these firms in other jurisdictions. The mapping should also include all branches and subsidiaries with a head office in third countries, which are under the supervision of the competent authority completing the mapping.
8. The mapping exercise, while more formalised in these Guidelines, is not a new concept to competent authorities, and many will be able to draw on their existing maps of firms, including those created to apply a risk-based approach to supervision in line with Article 48(6) of the AMLD4 and as set out in the ESAs Risk Based Supervision Guidelines<sup>3</sup>.

**Question 1: Do you agree with the proposal set out in Guideline 1 regarding the mapping of firms?**

### Conditions for establishing an AML/CFT college

9. The proposed guidelines do not require competent authorities to set up an AML/CFT college for all firms under their supervision but only those that meet the conditions proposed in Guideline 2. Generally, the college should be set up where there are three or more competent authorities from different Member States involved in supervising the firm. Where a firm has

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<sup>3</sup> Joint guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis were published by the ESAs on 16 November 2016 (available here: [https://esas-joint-committee.europa.eu/Publications/Guidelines/Final\\_RBSGL\\_for\\_publication\\_20161115.pdf](https://esas-joint-committee.europa.eu/Publications/Guidelines/Final_RBSGL_for_publication_20161115.pdf)) and all competent authorities require to comply with these

operations in three or more different jurisdictions, it may be an indicator that a firm has a complex governance structure and diverse customer base, which may heighten the ML/TF risk. This is reflected in the proposal in Guideline 2.

10. Considering that the competent authorities in the EU are responsible for the supervision of compliance with their Member State's AML/CFT rules by branches and subsidiaries established in the EU by a parent undertaking based in a third country, Guideline 2 therefore also set out circumstances in which an AML/CFT college is required to be set up for the entities operating in the EU.

### Establishing and maintaining an AML/CFT college

11. In order for the AML/CFT college to be established, one of the CAs involved in the supervision of the firm should be responsible for setting up and maintaining the college. The ESAs envisage that the lead supervisor is best placed to do this, as is proposed in Guideline 3. However, the Guideline 3 provide that in certain circumstances, like where the lead supervisor has failed to set up a college, the host CA is also permitted to set up and maintain a college if necessary.

### Converting existing college structures into AML/CFT colleges

12. The ESAs are aware that there are AML/CFT sub-structures attached to some colleges of prudential supervisors. While such sub-structures are viewed as a positive development, evidence shows that they are often used only as a forum for the exchange of high-level information without any follow-up, such as agreeing on common actions or initiatives related to the supervision of the particular firm or group. In the ESAs view, these sub-structures are not being used to the full extent and therefore add very little value to the overall supervision of the firm/group. Also, the ESAs are concerned that relevant AML/CFT competent authorities are not always invited to the meetings of these sub-structures, or that participants are prudential supervisors who are not specialist in AML/CFT matters.
13. The ESAs acknowledge the existence of these sub-structures and the proposal in Guideline 4 therefore provides that, in certain circumstances, they can continue operating. However, in order to improve their effectiveness, Guideline 4 also requires that a gap analysis should be carried out by the lead supervisor to ensure that the sub-structure is operating in line with these Guidelines. Where the gap analysis highlights differences, the lead supervisor should make the necessary changes to improve the operation of the sub-structure or to set up a new AML/CFT college as described in these Guidelines.

**Question 2: Do you agree with the proposed conditions and processes for establishing of an AML/CFT college, including the conversion of already existing AML/CFT sub-college structures?**

### Composition of an AML/CFT college



14. Similar to the colleges of prudential supervisors, the AML/CFT colleges are made up of permanent members and observers. To that end, Guideline 5 proposes that permanent members are the competent authorities responsible for supervising the firm in different jurisdictions and the relevant ESAs. The lead supervisor is responsible for identifying (as part of the mapping exercise) and inviting them to participate in the college.
15. The lead supervisor is also responsible for selecting observers who could add contribution to the college from among the prudential supervisors and relevant supervisory authorities of third countries. However, the lead supervisor must seek an approval from the permanent members before inviting the observers to participate in the college.
16. There are no issues with sharing of information between the permanent members as the same confidentiality apply to them. However, the CAs may feel hesitant when disclosing non-public information to supervisors from third countries who are covered by different confidentiality provisions or the invited attendees. And the guidelines set out steps that need to be taken by the lead supervisor to ensure that supervisors from third countries are adhering to the same confidentiality arrangements before inviting them to attend the college.
17. In addition to the permanent members and observers, the lead supervisor may also invite other attendees to participate in the college on an ad hoc basis where it considers that these attendees may add value to the college discussions. There are no limitations as to who can be invited as an attendee, however, in practice it will be FIUs, the firm, consultants who have engaged with the firm, etc. Before inviting other attendees, the lead supervisor must be able to justify their attendance to the permanent members and must seek their approval. All invited attendees can attend a particular session of the college only and should leave immediately after that session. The Guidelines envisage that no confidential information will be shared with these attendees.

**Question 3: Do you agree with the proposed structure of colleges?**

**Contact lists**

18. For the lead supervisor to carry out its responsibilities in relation to the AML/CFT college, host competent authorities, which are the permanent members of the AML/CFT college, are obliged to notify the lead supervisor of any changes in their status or contact details without undue delay. In circumstances where some information has not been delivered to the permanent member of the AML/CFT college due to changes in contact details, Guideline 6 proposes that the lead supervisor cannot be held responsible if these changes were not notified to the lead supervisor.
19. The lead supervisor must review the observers' contact details regularly to ensure that they are up to date.

**AML/CFT college meetings**

20. These draft Guidelines allow the flexibility and do not set any specific limitations or requirements as regards the frequency and form of the AML/CFT college meetings because, on a basis of their ML/TF risk profile, some firms may require more frequent meetings than others. The aim of Guideline 7 is therefore to foster cooperation between CAs, which adds value to their supervisory practices, whereby supervisors can share their concerns and focus their resources to more risky areas of the firm.
21. These Guidelines do not intend to create an additional administrative burden, which may subsequently turn into a box ticking exercise, whereby a college meeting is set up only because the Guidelines require to do so but nothing substantial is discussed at the meeting. Therefore, Guideline 7 allows the lead supervisor, in consultation with the permanent members, to decide how frequently the college meetings should be held and whether other form than a physical meeting would suffice. The only circumstances where the Guidelines recommend that at least one physical meeting a year should be held is where the firm is considered high risk for ML/TF purposes.
22. The Guidelines also provide for circumstances where an ad-hoc college meeting might be required. The lead supervisor either on its own initiative or upon request from one or more permanent members can call such meeting.

**Question 4: Do you agree with the proposed approach for organising the college meetings?**

**Written cooperation and information sharing agreement**

23. Guideline 8 proposes that general conditions for operating an AML/CFT college should be set out in a cooperation and information sharing agreement.
24. As the drafting of such agreement could be time consuming for the lead supervisor, the Guidelines envisage that a template agreement provided in Annex II is used for all AML/CFT colleges, unless requested otherwise by the permanent members.

**Question 5: Do you agree with the proposed approach for putting in place a cooperation and information sharing agreement?**

**The scope of mutual assistance**

25. While the AML/CFT colleges act as an important forum for exchanging information, they can also add value to other supervisory tasks. For example, the competent authorities may agree to carry out a joint inspection at the firm.
26. Guideline 9 sets out a non-exhaustive list of matters where the assistance can be sought and provided by the CAs, making it clear that this is not an exhaustive list as the intention of the AMLD is that the fullest mutual assistance possible is provided.

**Procedure for requesting mutual assistance**



27. Guideline 10 sets out the process for requesting and providing mutual assistance between the permanent members and between the permanent members and observers, where provided in the Terms of Participation of observers, which are prepared individually for each observer by the lead supervisor of the AML/CFT college.

**Question 6: Do you agree with the proposed scope of and the process for requesting the mutual assistance?**

### Confidentiality restrictions and permissible uses of information

28. In colleges setting, it is important for CAs to be free to discuss and share non-public information with each other.
29. Guideline 11 therefore provides a non-exhaustive list of situations when a permanent member may be asked to share information obtained as part of the AML/CFT college by a third party that is not a member or observer at the college. These Guidelines provide that such information can be disclosed only if the party who has disclosed has consented to such disclosure.

**Question 7: Do you agree with the proposed approach regarding the uses of non-public information?**

### Common approach

30. For CAs to achieve the best results from their participation at the AML/CFT colleges, they may want to agree on a common approach with other CAs responsible for supervising the firm. Such common approach may involve a thematic review on a particular area or a joint inspection. To that end, Guideline 12 proposes that only CAs that are permanent members can agree on the common approach.
31. Where the CA has agreed to the common approach but has failed to apply it in practice, Guideline 12 clarifies that other CAs parties to this agreement may ask the ESAs to commence a non-binding mediation.

### Coordinated supervisory action

32. In certain circumstances, the AML/CFT supervision of a firm may prove to be more effective where supervisors coordinate their actions. For example, the supervision of a firm's compliance with Article 45 of the Directive (EU) 2015/849, which requires that group-wide policies and procedures are implemented by a firm in its branches and majority-owned subsidiaries, may be exercised by competent authorities more effectively where they agree on coordinated supervisory actions.

**Question 8: Do you agree with the proposal that a common approach and coordinated actions can be agreed by competent authorities?**

## Cooperation between AML/CFT colleges and prudential supervisors

33. The intention of these guidelines is to structure the cooperation and information exchange between prudential supervisors and competent authorities and to ensure relevant information is exchanged in a timely manner. This is reflected in the proposals in Guideline 14.

### Bilateral relationships

34. In accordance with these guidelines, not all firms will require an AML/CFT college to be set up and competent authorities supervising firms that do not require the establishment of the college will continue engaging with each other on a bi-lateral basis. However, the evidence shows that without any formal framework in place these bi-lateral communications and engagements are often not achieving the results intended. Relevant requirements to this end are proposed in Guideline 15.

**Question 9: Do you consider that these guidelines have sufficiently addressed different ways of cooperation and information exchange between AML/CFT and prudential supervisors?**

### Conflict resolution

35. Considering that there are different parties involved in AML/CFT colleges, Guidelines 16 proposes that any conflicts that may arise between these parties can be referred to the relevant ESAs for non-binding mediation.

### Transitional period

36. The Guidelines anticipate the establishment of AML/CFT colleges for all firms that meet the conditions set out in Guideline 2. However, the establishment of a college for the first time may take time and will require sufficient resource allocation by the lead supervisors. In order to ensure that any disruptions to other tasks carried out by the competent authorised are kept to a minimum, these guidelines propose a transitional period in Guideline 17.

### Review of these guidelines

37. These guidelines will require the implementation of new processes and procedures by competent authorities for establishing and maintaining AML/CFT colleges. Therefore the ESAs consider it pertinent to ensure that the provisions of these guidelines are implemented properly by the competent authorities and assess whether any changes are required. This is provide in final Guideline 18.

**Question 10: Do you agree with the proposed transitional period and review provisions?**

## 4. Accompanying documents

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## 4.1 Draft cost-benefit analysis/ impact assessment

Directive (EU) 2015/849 aims, inter alia, to bring European Union legislation in line with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation that the FATF, an international AML/CFT standard setter, adopted in 2012.

In contrast to other EU legal texts, the Directive (EU) 2015/849 does not set out in detail how the competent authorities from different member states should cooperate and exchange information. In the absence of detailed provisions in the Directive (EU) 2015/849 and specific references to cooperation and information exchange for the supervision purposes in most other EU legal texts, the Commission, Council, and Parliament, have amended the Directive (EU) 2015/849 through Articles 50a and 57a where it explicitly requires the competent authorities to exchange the information and to cooperate between them.

### A. Problem identification

Despite being helpful in setting the tone for cooperation amongst competent authorities, the amended Directive (EU) 2015/849 does not go far enough to achieve the intended levels of cooperation and information exchange as the directive does not set out in detail how this should be achieved. The three ESAs have therefore arrived at the conclusion that in order to improve the supervisory cooperation within the EU, it would be of beneficial to issue a set of guidelines that would establish a formal framework for such cooperation and information exchange.

With these guidelines the ESAs are proposing that such a framework should evolve around AML/CFT colleges, similar to the model adopted by prudential supervisors. These guidelines require the setting up of AML/CFT colleges for firms operating on a cross-border basis in at least three jurisdictions. The purpose of the AML/CFT colleges is to provide a forum for competent authorities responsible for the supervision of the same firm in different jurisdictions to collaborate and exchange information in view to build a common understanding of the ML/TF risks associated with this firm. This would allow them to inform their approach to AML/CFT supervision of this firm, coordinate supervisory action, where appropriate, and formalise the process for bilateral exchanges of information between competent authorities.

### B. Policy objectives

The strategic objective of the guidelines is to move towards the improved harmonisation of the supervisory framework, i.e. creating a framework comprising equivalent supervisory practices across the EU. The operational objective when creating this framework is to promote a common understanding, amongst competent authorities across the EU. A common understanding is essential to ensure the consistent interpretation and application of Union law and conducive to a stronger European anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

At the same time, the ESAs are clear that guidelines need to leave sufficient room for the competent authorities to define their approach in a way that is commensurate with the ML/TF risk they are exposed to.

### C. Baseline scenario

Article 57a of Directive (EU) 2015/849 requires competent authorities to exchange information and cooperate with each other to the greatest extent possible, however there is no explanation given in the Directive how this could be achieved in practice.

This impact assessment assesses the advantages and disadvantages of different options considered by the ESAs on how to address the absence of detailed provisions in Directive (EU) 2015/849. The impact assessment also evaluates the magnitude of potential costs associated with each option.

Given the low anticipated impact, in monetary terms, the cost-benefit analysis section assesses only the high-level impact on the operational cost by fully implementing the guidelines.

### D. Options considered

The ESAs considered various options how to foster the cooperation and information exchange between competent authorities, which include:

#### **Option 1: In the absence of guidelines, relying on relevant provisions of the AMLD5 (“do nothing” option).**

There is no explicit mandate given to the ESAs in the AMLD for drafting guidelines on the cooperation and information exchange between competent authorities. In line with Art 57a of the AMLD5, competent authorities are required to cooperate with each other to the greatest extent possible, regardless of their respective nature and status. In the absence of guidelines, competent authorities will engage bilaterally with each other on an ad hoc basis.

- **The advantage** of this option is that it does not require any material changes to the competent authorities’ current practices and competent authorities can continue to engage bilaterally on an ad hoc basis.
- **The disadvantages** of this option are that in the absence of a framework that would structure the cooperation and information exchange, it is evident that in practice the majority of competent authorities are not cooperating and even where the cooperation is taking place, it has rarely achieved the desired results as competent authorities cooperate with each other and exchange information only after the ML/TF risk has already crystallised. There are different reasons why competent authorities are failing to cooperate, including:
  - the lack of interest or prioritisation;
  - competent authorities being unable to identify their counterpart due to differences in the way AML/CFT supervision is organised in different member states;
  - actual or perceived legal obstacles.

**Option 2: AML/CFT is discussed as part of the existing colleges of prudential supervisors ('prudential colleges') framework.**

Prudential supervisors of banking groups which operate on a cross-border basis are required to set up colleges of prudential supervisors (prudential colleges) in line with the Implementing Technical Standards on the operational functioning of the colleges of supervisors according to Directive 2013/36/EU (ITS). This framework provides that AML/CFT matters can be discussed as part of the prudential college meetings or that an AML/CFT sub-structure can be set up as part of the college.

- **The advantage** of this option is that it allows the ESAs to establish a clear link between prudential and AML/CFT supervisors and the mapping has already been carried out.
- **The disadvantages** of this option are:
  - prudential colleges are required only for banking groups, which would mean that a different, parallel process would need to be established for the information exchange between competent authorities in other sectors, like for payment institutions;
  - where the bank is under direct supervision of Single Supervisory Mechanism, prudential colleges are only required where the bank has operations outside the Eurozone. This means that those banks, which have branches and subsidiaries in other member states within the Eurozone, do not require a prudential college and there would need to be a parallel process established for the information exchange between competent authorities responsible for the supervision of those significant banking groups.
  - AML/CFT sub-structures that already exist in some prudential colleges have yielded mixed results;
  - It is evident that often AML/CFT discussions as part of the prudential colleges happen retrospectively, after the ML/TF risk has already crystallised and considering that participants at the prudential colleges are not AML/CFT specialists, they are able to challenge the issues presented to them in any meaningful way.

**Option 3: The ESAs draft their own-initiative guidelines.**

The ESAs draft guidelines that establish a formal framework for the cooperation and information exchange amongst competent authorities through either bilateral engagements or AML/CFT colleges and set out the process for establishing and functioning of these colleges.

- **The advantages** of this option are:
  - The guidelines require that specialist AML/CFT supervisors participate in the college meetings to ensure that ML/TF issues and risks associated with a particular firm or group are sufficiently discussed and challenged if needed;
  - the guidelines provide that AML/CFT college meetings are held regularly, however the frequency and form of these meetings is determined by the ML/TF risk associated with the firm, so that the ML/TF risks can be identified and mitigate before they have crystallised;



- the guidelines provide that in certain circumstances where competent authorities cannot come to an agreement they can refer the matter for mediation by the ESAs; and
- the mapping of firms to establish whether the AML/CFT college is required, will allow the competent authorities to develop a holistic view of firms operating in their jurisdiction and to develop better understanding of ML/TF risks associated with each sector.
- **The disadvantage** of this option that it may potentially create more work for competent authorities in the short term, particularly for those competent authorities who do not yet have a good understanding of the firms operating in their jurisdiction and ML/TF risks associated with these firms. However, the risk-based approach incorporated in these guidelines will ensure that in the medium term, any additional workload remains proportionate to the ML/TF risk.

### E. Cost-Benefit Analysis

The implementation of the different options listed above implies both benefits and costs for competent authorities. The identified benefits will be realised on an on-going basis assuming that all member states adopt the guidelines. These benefits mostly relate to the reduction of the excessive (and unstructured) communications amongst competent authorities, which will save competent authorities’ resources in the long-term. The operational cost arises from the implementation of the guidelines, which is mostly a one-off cost which will materialise at the time when competent authorities will be implementing the guidelines. The cost includes the training of the competent authorities’ staff, and from the dedication of resources to digest the processed proposed by the guidelines.

Overall, the net impact of the implementation of the three alternative options is the following:

Option considered	Benefit	Cost	Net impact
Opt. 1 (“do nothing”)	ZERO	ZERO	<b>ZERO</b>
Opt. 2 (“do nothing – prudential colleges”)	LOW	ZERO	<b>ZERO</b>
Opt. 3	HIGH	MEDIUM 1 <sup>st</sup> year cost: <b>MEDIUM-TO-HIGH</b> Consecutive years: <b>LOW</b>	<b>LOW (positive)</b>



The costs and benefits of Options 1 and 2 cancel out, producing a zero net impact. The implementation of Option 3 produces high benefits because it implies saving resources due to the standardisation of the processes and potentially more targeted supervisory actions, which will lead to the improvement of quality and efficiency of the tasks performed by the competent authorities.

#### F. Preferred option

After taking into account the qualitative assessment (advantages/disadvantages) provided in Section D and the cost-benefit analysis of Section E, the ESAs preferred option is Option 3. The preferred option yields a positive net impact and provides a clear framework for the cooperation and exchange of information among competent authorities, enabling them to mitigate any ML/TF risks before they have crystallised. Thus, it serves the operational objective set by the present guidelines. In a long term, this option could potentially reduce the ML/TF vulnerabilities within the internal market and increase the effectiveness of the AML/CFT supervision within the EU.

When implementing Option 3, competent authorities can build on the mapping already carried out by adding additional relevant information to it. In order to obtain this additional information, the competent authorities can use various sources of information, including the information from public registers of authorised firms. These Guidelines encourage the cooperation and information exchange between AML/CFT and prudential supervisors, particularly consolidating supervisors who are responsible for setting up prudential colleges for banks and therefore have already carried out the mapping exercise.

#### G. Pilot test of the mapping exercise

Results of the cost-benefit analysis for Option 3 are also supported by the results from a pilot test of the mapping exercise which was carried out by two competent authorities. Both pilot tests focused only on mapping of credit institutions, including branches and subsidiaries established in their member state from third countries. Nonetheless, they provide a useful insight in what will be required of competent authorities to ensure the implantation of these guidelines. In summary:

- **Population of banks**

	<b>Competent authority I (CAI)</b>	<b>Competent authority II (CAII)</b>
<b>Population of banks</b>	<b>48 banks</b> – authorised by the CAI; <b>45 branches</b> – with a head office in EEA; <b>3 branches</b> – with a head office in a third country.	<b>59 banks</b> – authorised by the CAII; <b>2</b> - saving banks; <b>63</b> - credit cooperative banks; <b>79 branches</b> – with a head office in EEA; <b>4 branches</b> – with a head office in a third country
<b>Population of banks that will</b>	<b>15 banks</b> where the CAI will be required to establish an AML/CFT college; and	<b>6 banks</b> where the CAII will be required to establish an AML/CFT college; and

<p><b>require college</b></p>	<p><b>a 45 branches</b> of banks with a head office in an EEA country – the CAI will be potentially required to attend an AML/CFT college as a permanent member.</p>	<p><b>15 branches</b> of banks with a head office in an EEA country – the CAI will be potentially required to attend an AML/CFT college as a permanent member.</p>
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- **Resources and time commitment**

In relation to resources, both competent authorities confirmed that it took them approx. two weeks to complete the mapping exercise and it involved a number of different people working on it simultaneously. Overall, the mapping process involved discussions between different staff, data selection, combining data with risk profiles and assessing that data. CAI estimated that it would take approx. three days to complete the mapping for each sector when 3 or 4 people working on it at the same time.

- **Availability of information**

Both competent authorities confirmed that most information (approx. 60%) related to banks authorised by them was freely available either from their own activities or from the public registers. CAI highlighted that the most challenging part of the mapping exercise was to decide on the exact data that was required to perform the mapping. Once this was clear, it was easy to extract this data from the public register. Yet, both competent authorities found it challenging to gather information about branches of banks operating in their jurisdiction with a head office in another EEA state or in a third country.

## 5. Overview of questions for consultation

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- Do you consider that the implementation of these guidelines will improve the cooperation and information exchange between AML/CFT competent authorities and prudential supervisors? If you do not agree, then please propose an alternative approach how this could be achieved.
- Do you agree with the proposed approach that the mapping exercise should be carried out by all competent authorities to identify which firms will require an AML/CFT college to be set up? If you do not agree, then please propose an alternative approach how competent authorities can identify firms that require an AML/CFT college.
- Do you agree with conditions set out in these guidelines that trigger the setting up an AML/CFT college? If you do not agree, please propose alternative or additional conditions that should be considered.

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JOINT COMMITTEE OF THE EUROPEAN  
SUPERVISORY AUTHORITIES



JC/GL/20XX/XX

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# Draft Guidelines

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

# 1. Compliance and reporting obligations

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## Status of these Joint Guidelines

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

Joint Guidelines set out the ESAs’ 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 to whom the Joint Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where the Joint Guidelines are directed primarily at institutions.

## Reporting Requirements

In accordance with Article 16(3) of the ESAs’ Regulations, competent authorities must notify the respective ESA whether they comply or intend to comply with these Joint Guidelines, or otherwise with reasons for non-compliance, by **dd.mm.yyyy** (two months after issuance). In the absence of any notification by this deadline, competent authorities will be considered by the respective ESA to be non-compliant. Notifications should be sent to **[compliance@eba.europa.eu](mailto:compliance@eba.europa.eu)**, **[compliance@eiopa.europa.eu](mailto:compliance@eiopa.europa.eu)** and **[compliance@esma.europa.eu](mailto:compliance@esma.europa.eu)** with the reference ‘JC/GL/201x/xx’. A template for notifications is available on the ESAs’ websites. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

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

## 2. Subject matter, scope and definitions

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### Subject matter

These guidelines:

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

### Scope of application

These guidelines apply to competent authorities that supervise firms which are:

- a) exercising the freedom of establishment in at least one other EU Member State and/or EEA EFTA State, whether in form of a branch or other forms of establishment;
- b) parent undertakings and have subsidiaries in at least one other EU Member State and/or EEA EFTA State;
- c) subsidiaries of parent undertakings with head office in at least one other EU Member State and/or EEA EFTA State;
- d) branches or operate through another form of establishment and whose head office is in another EU Member State and/or EEA EFTA State;
- e) subsidiaries of parent undertakings with head office in third country and operate in at least two EU Member States and/or EEA EFTA States.
- f) branches established by credit institutions or financial institutions in at least two EU Member States and/or EEA EFTA States with head office in a third country;
- g) subsidiaries of a parent undertaking which is not a credit or financial institution as defined by the AMLD.

These guidelines do not apply to competent authorities that supervise firms that are parent undertakings only of subsidiaries established in a third country and/or established branches only in one or more third countries.



## Definitions

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

Competent authority	A competent authority defined in point (2)(ii) of Article 4 of Regulation (EU) No 1093/2010; point (2)(ii) of Article 4 of Regulation (EU) No 1094/2010; point (2)(ii) of Article 4(2) of Regulation (EU) No 1095/2010 that is competent for ensuring firms' compliance with the requirements of Directive (EU) 2015/849.
Lead supervisor	The competent authority of the EU Member State or EEA EFTA State in which the parent undertaking of the firm has its head office.
College	A college of supervisors from competent authorities responsible for supervising firms that operate on a cross-border basis. Such college provides a permanent structure for cooperation and information sharing between competent authorities.
Host competent authority	The competent authority of the EU Member State or EEA EFTA State in which a parent undertaking with head office in another EU Member State or EEA EFTA State established (i) firm (subsidiary) or (ii), or a branch or another establishment.
Firm	Means credit institutions and financial institutions as defined in point (1) and (2) of Article 3 of Directive (EU) 2015/849.
Parent undertaking	a parent undertaking within the meaning of paragraphs (1) and (2) of Article 22 of Directive 2013/34/EU
Prudential supervisors	The competent authority defined in point (2)(i) of Article 4 of Regulation (EU) No 1093/2010; in



point (2)(i) of Article 4 of Regulation (EU) No 1094/2010; point (2)(i) of Article 4 of Regulation (EU) No 1095/2010.

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EEA EFTA State

means Iceland, Liechtenstein, and Norway

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## 5. Implementation

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### Date of application

These guidelines apply from .../ .../ .....

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

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## Guideline 1: Mapping of firms

- 1.1 Competent authorities should identify all firms and entities as described in letters a) to g) of the scope section of these guidelines, except if a similar such mapping exercise has already been carried out as part of their risk based supervision framework and is supported by a ML/TF risk assessment of firms and sectors within their supervisory remit, provided that the existing mapping exercise:
  - a) covers all firms referred to in letters a) to g) of the scope section; and
  - b) contains sufficient information for the competent authority to ensure their compliance with these guidelines.
- 1.2 When executing the mapping, competent authorities should gather the required information from various sources including, but not limited to, information from:
  - a) public registers of authorised/ licensed firms;
  - b) prudential supervisors, where such information is available, particularly information obtained as part of authorisations and passporting notifications;
  - c) consolidating supervisors who are responsible for establishing colleges of prudential supervisors, where they exist;
  - d) competent authorities' supervisory activities;
  - e) the register of third country branches operating in the EU Member States published on the European Banking Authority's website.
- 1.3 When performing the mapping, competent authorities should record their findings in the mapping template provided in Annex I of these guidelines.
- 1.4 Where the mapping is completed for firms described in letters a) to d) of the scope section of these guidelines, competent authorities should always include:
  - a) a list of EU Member States and/or EEA EFTA States where a firm:

- has established a subsidiary;
  - has established a branch; and
  - is established in forms other than a branch.
- b) the level of ML/TF risk associated with firms described in letters a) to d) of the scope section to the extent that this is known in line with Chapters 1 and 2 of the ESAs Joint Guidelines (ESAs 2016 72) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis (the ‘Risk-Based Supervision Guidelines’).
- 1.5 Where a competent authority is responsible for the supervision of firms described in letters e) and f) of the scope section of these guidelines, the mapping should include at least:
- a) the name of a third country where the parent undertaking has a head office;
  - b) all EU Member States and/or EEA EFTA States where branches and subsidiaries of third country entities belonging to the same group operate, to the extent that this is known to the competent authority;
  - c) the level of ML/TF risk associated with these firms and entities, assessed in line with Chapters 1 and 2 of the Risk-Based Supervision Guidelines, to the extent that this is known to the competent authority.
- 1.6 Where the mapping is completed for firms described in letter g) of the scope section of these guidelines, competent authorities should always include:
- a) a list of EU Member States and/or EEA EFTA States, where the parent undertaking has established other subsidiaries, to the extent that this is known to the competent authority;
  - b) the level of ML/TF risk associated with these firms, assessed in line with Chapters 1 and 2 of the Risk-Based Supervision Guidelines.
- 1.7 Competent authorities performing the mapping should ensure that their understanding of firms described in the scope section of these guidelines remains up-to-date and should repeat the mapping exercise regularly, and in any case when made aware through available sources of information, including information received from permanent members or observers, of any relevant changes in the ownership structure of the firm or group.

## Guideline 2: Conditions for establishing an AML/CFT college



- 2.1 After completing the mapping exercise in line with Guideline 1, competent authorities should identify the firms that will require the establishing of an AML/CFT college. The conditions for establishing an AML/CFT college are met when
- a) a firm with a head office in one EU Member State or in an EEA EFTA State has established branches, establishments other than branches, and/or is a parent undertaking of subsidiaries in at least two other EU Member States and/or EEA EFTA States; or
  - b) a parent undertaking with a head office in a third country has established:
    - (i) branches or subsidiaries in at least three EU Member States and/or EEA EFTA States;
    - (ii) a firm in at least one EU Member State and/or EEA EFTA State, which is exercising the freedom of establishment in at least two other EU Member States and/or EEA EFTA States; or
    - (iii) at least one firm in an EU Member State and/or EEA EFTA State and branches in at least two EU Member States and/or EEA EFTA States.
- 2.2 Where the conditions for setting up an AML/CFT college are not met, competent authorities should refer to Guideline 15 on bilateral relationships between competent authorities from different jurisdictions.

### Guideline 3: Establishing and maintaining an AML/CFT college

- 3.1 Where the conditions set out in Guideline 2 are met, the lead supervisor is responsible for establishing and maintaining the AML/CFT college.
- 3.2 A host competent authority, provided that all permanent members have been notified in writing and have agreed, is responsible for establishing and maintaining an AML/CFT college and becomes a lead supervisor where:
- a) a lead supervisor asks the host competent authority to establish and maintain the AML/CFT college and the host competent authority agrees to do so;
  - b) a host competent authority referred to in letter a) above fails to establish the AML/CFT college, another host competent authority should assume the responsibility for establishing the college;
  - c) a host competent authority identifies money laundering and/or terrorist financing risks associated with operations of the firm's subsidiaries, branches, or establishments other than branches in its territory to be high.
- 3.3 Competent authorities responsible for supervising firms and entities described in letters e) to g) of the scope section of these Guidelines should submit to the relevant European



Supervisory Authority a completed mapping template and thereafter, if necessary, submit any changes to the mapping template on an annual basis by December 31<sup>st</sup>, using the template provided in the Annex I.

- 3.4 The relevant ESA is responsible for determining the lead supervisor on a basis of information received from competent authorities in line with Guideline 3.3. To make such determination, the ESAs will consider the following conditions:
- a) a branch or a subsidiary with the highest total value of its assets;
  - b) a branch or a subsidiary which presents the highest level of ML/TF risk in accordance with the competent authority's risk assessment; or
  - c) a subsidiary where that subsidiary is exercising the freedom of establishment in at least two other EU Member States and/or EEA EFTA States.
- 3.5 Where the competent authority that is responsible for supervising firms described in letters a) to d) of the scope section of these Guidelines is the lead supervisor, it should prioritise the establishment of AML/CFT colleges for firms that are classified in its risk assessment as high risk for ML/TF purpose. Such risk assessment should be carried out in line with the ESAs Joint Guidelines (JC 2017 37) on Joint Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced 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 ('Risk Factors Guidelines'), the ESAs Risk Based Supervision Guidelines and taken into consideration the European Commission's Supra National Risk Assessment.
- 3.6 Where competent authorities fail to identify the lead supervisor in line with point 3.2 of these Guidelines and therefore an AML/CFT college is not established, the responsible ESAs, either on its own initiative or upon request from the competent authorities should carry out non-binding mediation pursuant to Article 31(c) of the ESA's Regulations.
- 3.7 Where a lead supervisor does not establish an AML/CFT college even though the conditions for setting up the college are met, host competent authorities should:
- a) contact the lead supervisor with a request to establish the AML/CFT college within a time frame set by the host competent authority; and
  - b) where, following the request described in letter a) above, the lead supervisor fails to establish the college within the set period contact the responsible European Supervisory Authority with a request to mediate pursuant to Article 31(c) of the ESA's Regulation.

## Guideline 4: Converting existing college structures into AML/CFT colleges

4.1 The lead supervisor should confirm with the Chair of the college of prudential supervisors whether there is an existing AML/CFT sub-structure within the prudential college. Where such sub-structure exists, the lead supervisor should, in coordination with the Chair of the college of prudential supervisors (and other members of that college, as necessary):

- a) consider converting the existing sub-structure into an AML/CFT college which is compliant with these guidelines. When converting the existing AML/CFT sub-structure, the lead supervisor should conduct a gap analysis and identify which, if any, processes and procedures should be changed to ensure the converted sub-structure complies with these Guidelines.
- b) carry out an assessment on whether the existing AML/CFT sub-structure can remain in place, instead of converting it into an AML/CFT college as described in letter a) of point 4.1 of these guidelines, and repeat the assessment at least every five years. The assessment should consider the following:
  - i. the firm's and sector's exposure to ML/TF risk is low;
  - ii. whether there is a sufficient time allocated to discussions on AML/CFT related matters at each college meeting, with substantial discussions taking place at least annually, and such discussions are reflected in the minutes;
  - iii. whether the college has sufficient representation of AML/CFT competent authorities; and
  - iv. the permanent members have agreed that the conversion of the existing AML/CFT sub-structure is not required.

4.2 Should conversion described in letter a) of point 4.1 of these guidelines not be possible, the lead supervisor is responsible for establishing an AML/CFT college in line with these guidelines.

## Guideline 5: Composition of an AML/CFT college

### Permanent members

5.1 The lead supervisor should always invite the following permanent members to participate in the AML/CFT college:

- a) the host competent authorities;
- b) competent authorities responsible for the supervision of the parent undertaking where the lead supervisor is determined in line with Guideline 3.2;

- c) other relevant national competent authorities, if there is more than one competent authority responsible for the supervision of the firm for which the college is being established;
- d) the appropriate ESA (EBA, ESMA or EIOPA).

5.2 The lead supervisor is responsible for identifying permanent members referred to in Guideline 5.1 and for recording their name and contact details in the contact list for the relevant AML/CFT college in line with Guideline 6. To identify relevant competent authorities, the lead supervisor may refer to the register of competent authorities published by the Commission in line with paragraph (1a) of Article 48 of AMLD.

5.3 Upon receipt of the invitation to participate in the AML/CFT college, permanent members should confirm their intention to participate in writing to the lead supervisor within the set period. Where an AML/CFT college is established for a firm described in Guideline 3.5, the permanent members should always participate in the college.

### Observers

5.4 The lead supervisor should invite observers to attend the AML/CFT college from among:

- a) supervisory authorities of third countries; and
- b) the prudential supervisors from EU Member States and/or EEA EFTA States, including, the European Central Bank.

5.5 The lead supervisor is responsible for identifying observers referred to in point 5.4 and for recording their name and contact details in the contact list for the relevant AML/CFT college in line with Guideline 6. To identify relevant supervisory authorities, the lead supervisor may consult the ESAs register of third country supervisory authorities.

5.6 When deciding whether to invite observers, the lead supervisor should draw up a list of potential observers in line with point 5.4 of these guidelines. In doing so, the lead supervisor should consider all proposals received from permanent members in writing within a reasonable time and their justification for inviting a particular observer to the AML/CFT college and have regard to:

- a) the equivalence of the confidentiality regime applicable to the supervisory authority from a third country. The lead supervisor should carry out such assessment and take into account the EBA's recommendations on the equivalence of confidentiality regimes of the third country supervisory authorities as published on the EBA's website, as well as to European Commission's equivalence decisions in the area of Solvency II if appropriate;
- b) what impact the attendance of the observer might have on the functioning of the AML/CFT college;

- c) the observer's ability and preparedness to sign bilateral cooperation agreements with all permanent members pursuant to Article 57a (5) of AMLD.

- 5.7 The lead supervisor should share a list of potential observers described in point 5.6 above with all permanent members of the AML/CFT college.
- 5.8 Permanent members should raise any observations and objections to the proposed observers being invited to participate in the AML/CFT college within the deadline set by the lead supervisor. These observations and objections should be accompanied by a written rationale setting out the basis for these observations and objections, and how, in the permanent member's view, the proposed observer's participation in the AML/CFT college could affect college proceedings.
- 5.9 The lead supervisor may invite an observer to participate in the AML/CFT college only where all permanent members have unanimously agreed to it and where the potential observer agrees to abide by the Terms of Participation of observers which should be individually drafted by the lead supervisor in respect of each observer.

#### Invited participants

- 5.10 The lead supervisor, either on its own initiative or upon request from permanent member, may consider inviting relevant participants to attend the AML/CFT college meeting where:
- a) the attendance of these participants would benefit the AML/CFT college. Such participants may include the firm, the Financial Intelligence Unit, auditors, consultants, etc; or
  - b) particular matters discussed at the AML/CFT college may have an impact on the work carried out by invited participant. Such participants may include resolution authorities, the Single Resolution Board, deposits guarantee schemes, etc.
- 5.11 The lead supervisor should consider all proposals in writing from permanent members about potential participants and their justification for inviting them. The attendance of these invited participants should be limited to a particular session of the AML/CFT college at which no confidential information should be disclosed by permanent members.
- 5.12 The lead supervisor should consult with and receive approval of all permanent members before inviting other participants to attend a particular session of the AML/CFT college meeting. When inviting other relevant participants to attend an AML/CFT college meeting, the lead supervisor should notify the participants that their attendance is limited to a particular session only.
- 5.13 Permanent members should raise any concerns or objections about the proposed participants within the deadline set by the lead supervisor and should support them with a written rationale setting out the basis for these concerns or objections.



- 5.14 If during an AML/CFT college meeting attended by invited participants confidential information should be discussed, the member of the college who is providing such information has to give a prior explicit consent to share such information with invited participants. All invited participants should sign a confidentiality agreement that ensures that any confidential information discussed at a college meeting may not be disclosed to any person – or entity - outside of the college.

## Guideline 6: Contact lists

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

## Guideline 7: AML/CFT college meetings

### Scheduled meetings

- 7.1 The lead supervisor, in consultation with permanent members, should determine the form and frequency of AML/CFT college meetings taking into account:
- the lead supervisor's assessment of the ML/TF risk associated with the firm or entity for which the AML/CFT college is established which it has determined in line with the Risk-based Supervision Guidelines; and
  - the views of permanent members.
- 7.2 When requested by the lead supervisor, permanent members should make available their ML/TF risk assessment (or at least the risk rating) of the firms and entities for which the AML/CFT college is established, without undue delay.
- 7.3 On a basis of the assessment referred to in point 13.1 above, the lead supervisor, together with permanent members, may decide whether a physical meeting, a phone conference or a video conference is more appropriate, without prejudice to the confidentiality of the college meetings. It is recommended by the ESAs that the first meeting of an AML/CFT college should be a physical meeting, however, if permanent members agree, the lead supervisor may consider the following factors when determining the most appropriate form of the meeting:
- the urgency and timeliness of the matter;
  - availability of permanent members;

- c) the level of ML/TF risk presented by firms or entities for which the college is established;
- d) any significant changes to the level of ML/TF risk associated with the firms or entities for which the college is established;
- e) impact on the effectiveness and functioning of the AML/CFT college

7.4 Where the lead supervisor determines and permanent members agree that the firm or entity presents a high risk of ML/TF, the lead supervisor should convene at least one physical AML/CFT college meeting per year, unless permanent members agree to a different frequency and form of the meeting. Where the ML/TF risk associated with that firm or entity is reduced, the lead supervisor may, in consultation with permanent members, replace the physical meeting with a telephone or video conference and amend the frequency as considered necessary.

7.5 To the extent that this is relevant and possible, the lead supervisor in consultation with permanent member, should organise a physical meeting of an AML/CFT college immediately before, after or at the same time as the college of prudential supervisors to facilitate the exchange of information between the competent authorities and prudential supervisors responsible for supervising entities described in points a) to g) of the scope section for which the AML/CFT college is established.

7.6 The lead supervisor should ensure that scheduled AML/CFT college meetings include at least:

- a) exchange of information on the firm or entity for which the college is established including:
  - (i) Competent authorities' assessment of the ML/TF risk profile of the firm and entities;
  - (ii) Early warnings and emerging ML/TF risks;
  - (iii) Crystallised ML/TF risks and wider supervisory findings (or provisional findings where serious breaches have been identified) relating to the AML/CFT policies and procedures, including the application of group-wide policies and procedures by the firm and entities;
  - (iv) Planned or recently completed AML/CFT supervisory action including on-site and off-site inspections;
  - (v) The number of filled suspicious transactions reports by the firm and entities where such information is available;
  - (vi) Sanctions or other corrective actions or measures that have been considered or imposed for breaches of AML/CFT obligations;

- (vii) Other supervisory or enforcement measures, including measures applied by prudential supervisors, where relevant, such as capital add-on based on ML/TF risk, or measures and decisions taken with regards to the authorisation, governance, internal controls, and fitness and propriety.
- b) A consideration of the need for a common approach and coordinated actions in accordance with Guidelines 12 and 13.

### Ad hoc meetings

- 7.7 The lead supervisor, either on its own initiative or upon request from one or more permanent members, should organise an ad-hoc meeting of the AML/CFT college where a ML/TF risk has crystallised, or a serious ML/TF risk has emerged such as:
  - a) alleged involvement of the firm or entities in an international ML/TF scheme; or
  - b) high non-compliance of the firm or entities with AML/CFT standards which can have an impact in other jurisdictions,
- 7.8 The lead supervisor should organise a meeting described in point 7.7 without delay and determine, in consultation with permanent members, the appropriate form of the meeting.
- 7.9 Where the lead supervisor fails to organise an ad hoc meeting of the AML/CFT college as described in point 7.8, one or more permanent members should organise the meeting and ensure that other permanent members are made aware of the meeting and issues that will be discussed.
- 7.10 Where an ML/TF risk has crystallised and an urgent action is required, one or more permanent members may organise an ad hoc meeting without delay and ensure that other permanent members are made aware of the meeting
- 7.11 Provisions of point 7.6 of these guidelines do not apply where an AML/CFT college meeting is organised in line with Guidelines 7.7, 7.8 or 7.9.

## Guideline 8: Written cooperation and information sharing agreement

- 8.1 Each AML/CFT college should have a written cooperation and information sharing agreement (the “agreement”) in place which should address at least:
  - c) the scope of mutual assistance, cooperation and information exchange;
  - d) the process to be followed for the provision of mutual assistance, including requests for cooperation and information exchange;
  - e) coordination of supervisory actions (including joint inspections);

- f) confidentiality restrictions and permissible uses of information;
- g) the rules governing the settlement of disputes;

8.2 The lead supervisor should complete a template of the agreement provided in Annex II of these guidelines for all AML/CFT colleges. When the template agreement is used, prior approval from permanent members is not required. However, the lead supervisor should communicate the completed agreement to all permanent members.

8.3 The lead supervisor should amend the agreement referred to in Guideline 8.2 if it considers necessary or upon request from permanent members. The lead supervisor should communicate the amended agreement to all permanent members, together with an invitation to provide comments within a set period. When finalising the amended agreement, the lead supervisor should consider the views expressed by permanent members, to the extent that they were received within the set period and should communicate the final written agreement to all permanent members.

8.4 The lead supervisor should keep the agreement prepared in line with points 8.2 or 8.3 under review and update it where necessary, subject to prior consultation with permanent members.

## Guideline 9: Scope of mutual assistance

9.1 Permanent members and observers, where provided in the Terms of Participation of observers, should provide each other with the fullest mutual assistance in any matters relevant to the AML/CFT supervision of the firms and entities for which the AML/CFT college has been established. Mutual assistance includes cooperation and information exchange, to the extent that such information exchange is permitted by the applicable legislation while having reference to Article 50a and 57a(4) of AMLD, in relation to, but not limited to:

- a) Authorisation, in particular when deciding whether or not a firm, or key persons within that firm, should be authorised or continue to meet the requirements for authorisation;
- b) Registration (where applicable), in particular when deciding whether or not an agent of a payment institution that operates through establishments in more than one Member State should be registered or continues to meet the requirements for registration;
- c) Qualifying holdings, in particular when deciding whether or not a proposed purchase of qualifying holdings affects the firm's ML/TF risk profile in different jurisdictions;
- d) Supervision of the firm in line with the Risk-based Supervision Guidelines, in particular

- (i) when testing the firm's application of AML/CFT policies and procedures, including the firm's application of group wide AML/CFT policies and procedures, where applicable;
  - (ii) when issuing findings related to the firm's failures to comply with the group-wide AML/CFT policies and procedures, where applicable;
  - (iii) when carrying out onsite inspections;
  - (iv) the outcome of a supervisory ML/TF risk assessment.;
- e) Conduct of (joint) on-site inspections in another Member State;
  - f) Examination of suspected, attempted or committed breaches of the firm's AML/CFT obligations;
  - g) Enforcement, for example when considering the impact of sanctions for breaches of the firm's AML/CFT obligations;
  - h) Emerging or crystallised ML/TF risks.

## Guideline 10: Procedures for requesting and providing mutual assistance

- 10.1 Permanent members can request mutual assistance, including supervisory cooperation and the exchange of information, from other permanent members and observers, to the extent that it is provided in their Terms of Participation of observers.
- 10.2 The requesting permanent member should submit its request in writing and provide detailed information on the purpose of the request. In exceptional circumstances where a verbal request is made, it should be followed up with a written confirmation as soon as practicable.
- 10.3 If a written or verbal request for mutual assistance is made to some permanent members or observers, in line with their Terms of Participation, but not all permanent members, a copy of such request should be sent to the lead supervisor in writing for information purposes within 3 working days of sending the original request.
- 10.4 When receiving a request for assistance from a permanent member or an observer, if permitted under the Terms of Participation of observers, the requested permanent member should provide the assistance required, including information about its ML/TF risk assessment, without undue delay and in comprehensive fashion. Should the requested permanent member refuse to act on a request for assistance, it should explain its reasons for so doing and wherever possible, highlight alternative ways to obtain the assistance requested.

## Guideline 11: Confidentiality restrictions and permissible uses of information

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## Non-public information

- 11.1 All permanent members should keep any non-public information obtained in the AML/CFT colleges context confidential. Non-public information includes requests for mutual assistance.
- 11.2 If a permanent member receives a request for mutual assistance from a competent authority that is not a permanent member or observer, and responding to that request would necessitate the disclosure of non-public information obtained in the AML/CFT colleges context, the requested permanent member should
- a) consult with those permanent members or observers affected by that disclosure;
  - b) disclose non-public information only if it has obtained the written agreement from the affected permanent members or observers;
  - c) not disclose that non-public information if the affected permanent members or observers consider that disclosure is not warranted. In those cases, the requested permanent member should ask the requesting competent authority to consider withdrawing its request for mutual assistance or amend it in such a way as to eliminate the need for the disclosure of non-public information.

## Permissible uses of information

- 11.3 Permanent members should use the information obtained in the AML/CFT colleges context, without prior consent, for the purposes set out in Article 57a of the AMLD and particularly to
- a) ensure the firm's or the entity's' described in points a) to g) of the scope section of these guidelines, for which the college has been established, compliance with their AML/CFT obligations; or
  - b) inform their ML/FT risk assessment of their sector.
- 11.4 If a permanent member decides to use the information obtained in the AML/CFT colleges context for any other purpose than those set out in the AMLD or these guidelines, it should obtain prior written consent from the permanent members or observers that are impacted by the information request before disclosing that information.

## Guideline 12: Common approach

- 12.1 Permanent members should agree on a common approach where this is necessary to ensure the effective compliance by firms or entities described in points a) to g) of the scope section these guidelines, for which the AML/CFT college has been established, with their AML/CFT

obligations or, where this is necessary, to ensure their consistent treatment by the competent authorities.

12.2 Two or more permanent members can agree on the common approach depending on the nature of the issue. For example:

- a) where an issue relates only to one of the firm's branch in one jurisdiction, it may be sufficient for , the permanent member responsible for the supervision of that branch and the lead supervisor to agree on the common approach or
- b) where an issue relates to the firm's or entity's application of group-wide policies and procedures, an agreement on the common approach between all permanent members may be more appropriate.

12.3 Where permanent members agree that a common approach is needed to resolve the issue but an agreement cannot be reached on how it should be applied, the lead supervisor's decision prevails.

12.4 Permanent members should commit to applying the approach described in points 11.1 and 11.2 of these guidelines in practice where this approach does not prejudice the powers and obligations conferred to them by virtue of their respective national laws.

12.5 Where a permanent member fails to act in accordance with the approach agreed in the AML/CFT college and has not provided any valid explanation for it, other permanent members should contact the responsible European Supervisory Authority with a request to mediate pursuant to Article 31(c) of the ESA's Regulations.

## Guideline 13: Coordinated supervisory action(s)

13.1 The common approach described in points 11.1 and 11.2 of these guidelines can lead to a coordinated supervisory action, which may include coordinated or joint inspections by some or all permanent members. When deciding whether to carry out a coordinated supervisory action, permanent members should have regard to:

- a) the nature and level of the ML/TF risk the joint action is designed to assess or mitigate;
- b) the specific risks or legal or regulatory provisions that form the subject matter of coordinated action, and any differences in the applicable legal and regulatory framework;
- c) the supervisory resources available, and the planned allocation of supervisory resources.

13.2 If a coordinate action is taken, participating permanent members should set out in writing, at a minimum:

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

## Guideline 14: Cooperation between AML/CFT colleges and colleges of prudential supervisors

14.1 The lead supervisor should engage with a consolidating supervisor or the Chair of the college of prudential supervisors in order to ensure cooperation and information exchange between AML/CFT and prudential supervisors as relevant for their tasks and as foreseen by applicable legislation. Such cooperation should:

- a) Include the exchange of relevant information (at least the minutes of the meeting) between the AML/ CFT college and the college of prudential supervisors of the firm for which the AML/CFT college has been established; and
- b) ensure participation in the meetings of their respective colleges, when a topic of relevance for the other college members is included in the agenda of their meetings.

## Guideline 15: Bilateral relationships

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

- a) Guideline 9 in relation to the scope of mutual assistance;
- b) Guideline 10 in relation to the process of mutual assistance;
- c) Guideline 11 in relation to the permissible uses of information; and
- d) Guideline 12 and 13 in relation to a common approach and coordinated supervisory actions.
- e) Point 7.6 of Guideline 7 in relation to the exchange of information.

## Guideline 16: Conflict resolution

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- 16.1 Any conflict, arising from the application of these guidelines, between permanent members and potentially observers may be referred to the responsible ESAs who can carry out non-binding mediation in accordance with Article 31(c) of the ESA's Regulations.
- 16.2 In relation to observers, mediation referred to in point 16.1 may be carried out where a conflict involves a permanent member who has requested mutual assistance from an observer but the observer has failed or has declined to provide it, and vice-versa, where such exchange of mutual assistance with an observer is permitted under the Terms of Participation of observers. Mediation involving observers is limited only to those conflicts that involve competent authorities from member states and not supervisory authority from a third country.

## Guideline 17: Transitional period

- 17.1 The lead supervisor should make every effort to establish as soon as possible an AML/CFT college for all firms that meet the conditions set out in Guideline 2, commencing the process with firms that are classified as high risk for ML/TF purposes. Recognising that the implementation will require a sequence of actions from competent authorities, and cognizant of proportionality in implementation, all elements should be in place no later than 2 years after the publication of these guidelines.
- 17.2 Competent authorities should document their justification for not establishing an AML/CFT college as required in point 17.1 above and should provide this justification upon request to the relevant ESAs or other competent authorities, where those competent authorities have a legitimate interest in the AML/CFT college being established.
- 17.3 During this transitional period, competent authorities should inform the ESAs of any issues encountered in the application of these guidelines.

## Guideline 18: Review of these guidelines

- 18.1 The ESAs will undertake a review of the implementation of these guidelines within four years after their publication.



## Annex I – Mapping templates

*[this template should be used when mapping firms which are authorised in your member state and which have established branches and subsidiaries in another EU/EEA EFTA State]*

Name of the firm	Type of firm	ML/TF risk rating	Legal identifier, if relevant	Name of a host member state or a third country	How the firm is operating in a host member state or a third country

*[this template should be used when mapping branches or subsidiaries which operate in the member state but have a head office in another member state]*

Name of the firm	Type of firm	ML/TF risk rating	Legal identifier, if relevant	Name of a member state where the head office is located	How the firm is operating in your member state



*[This template should be used when mapping branches or subsidiaries, which operate in the member, state but have a head office in a third country. This template should be provided to the ESAs ]*

Name of the firm	Type of firm	ML/TF risk rating	Legal identifier, if relevant	Name of a third country where the head office is located	How the firm is operating in your member state	Total value of assets of a branch or a subsidiary	The level of ML/TF risk associated with a branch or a subsidiary



## Annex II – Template agreement

### Cooperation and information sharing agreement (the “Agreement”)

### of the supervisory AML/CFT college (the “AML College”)

### established for the [XYZ] firm (the “Firm”)

#### i. Introduction

*[Record the name of the competent authority]* as the lead supervisor (the ‘lead supervisors’) has established this AML College in accordance with Articles 48 (4), 48(5), 49, 50(a) and 57(a) of Directive (EU) 2015/849.<sup>4</sup>

The purpose of the AML College is to ensure the cooperation of, and information exchange between, competent authorities that are responsible for the supervision of the Firm.

The lead supervisor in its risk assessment<sup>5</sup> has classified the Firm as [record the ML/TF risk rating] for ML/TF risk purposes. This AML College will operate in line with this Agreement, which will be reviewed and updated regularly, and according to the rules set out in the ESAs Guidelines on the cooperation and information exchange for the purposes of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (the “AML Colleges Guidelines”).

#### ii. Identification of members and observers

##### a. Description and structure of the Firm

The detailed description of the Firm is enclosed in an Appendix I to this Agreement.

*[Please insert a company chart and/or description in the Appendix I]*

##### b. Identification of permanent members

As a result of the mapping exercise carried out by the lead supervisor and in line with Guideline 5 of the AML Colleges Guidelines, the following authorities have been invited and accepted to become permanent members of the AML College:

*[Record names of all permanent members]*

A list of the contact details of all permanent members is enclosed in in the Appendix II attached to this agreement.

<sup>4</sup> As amended by DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

<sup>5</sup> The risk assessment should be carried out in accordance with the ESAs Risk Based Supervision Guidelines.

### ***c. Identification of the observers***

With reference to the mapping exercise carried out by the lead supervisor and in accordance with the ESAs AML Colleges Guidelines, the lead supervisor, in consultation with permanent members, has invited the following observers to participate in the AML college:

*[Record names of all observers]*

The lead supervisor considers that these observers have a particular interest and will provide contribution to the following matters discussed at the AML College:

*[include a list of topics]*

The observers' participation at the AML College is limited to the sessions where the above topics are discussed.

The lead supervisor confirms that these observers have agreed to abide by the Terms of the Participation of observers enclosed in the Appendix III to this Agreement.

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

- a) the lead supervisor considers the confidentiality regime of the supervisory authority in the third country to be equivalent to that of the competent authorities.

**Or**

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

*[include a list of sessions]*

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

### **iii. Participation in the AML College meetings**

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

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



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

#### iv. Scope and framework for requesting mutual assistance

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

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

#### vii. Treatment of confidential information

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

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

The permanent members will disclose the information obtained as part of the AML College to parties other than permanent members and observers, where appropriate, only in a manner described in the AML Colleges Guidelines. This does not prevent permanent members from disclosing the information in situations where they are legally compelled to such disclosure under the applicable law.

#### viii. Common approach and coordinated action

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

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



**ix. Conflict resolution**

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

**x. Final provisions for the written coordination and cooperation arrangements**

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

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

The language of communication within the AML College is *[Name the Language]*. This document should not be published.

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

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

**Appendix I – The Firm’s structure**

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

**Appendix II – Contact list**

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



## Appendix III – Individual Terms of the Participation of observers

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



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JOINT COMMITTEE OF THE EUROPEAN  
SUPERVISORY AUTHORITIES