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EBA/REP/2020/36

Risk assessment under Article 9a of the EBA Regulation

Methodology and process

Background and legal provisions

1. Article 9a(5) of the EBA Regulation mandates the EBA to ‘perform risk assessments of the strategies, capacities and resources of competent authorities to address the most important emerging risks related to money laundering and terrorist financing (ML/TF) at Union level as identified in the supranational risk assessment (SNRA)’. This work should inform the EBA’s wider work on anti-money laundering and countering financing of terrorism (AML/CFT), including the publication of the opinion on ML/TF risks under Article 6(5) of Directive (EU) 2015/849 (AMLD).
2. The legislation requires the EBA, in carrying out these risk assessments, to draw on information available to it, including information from other sources like relevant publications by international organisations or intergovernmental bodies in the field of AML/CFT.
3. Article 9a(5) requires the EBA to develop a methodology for the risk assessments to ensure an objective assessment. This methodology will be approved by the EBA’s Standing Committee on AML/CFT (AMLSC). In addition, before making the results of each risk assessment available to all competent authorities, EBA staff will ask the AMLSC to review the assessment and the application of the methodology from a quality and consistency perspective. Thereafter, the results will be presented for approval to the Board of Supervisors (BoS).

Differences between Article 9a risk assessments and other EBA tools

4. Article 9a risk assessments form part of the EBA’s convergence and monitoring toolbox. As explained to the AMLSC members in February 2020, this toolbox also includes peer reviews and implementation reviews, as set out in Table 1.

Table 1: The EBA’s convergence and monitoring tools

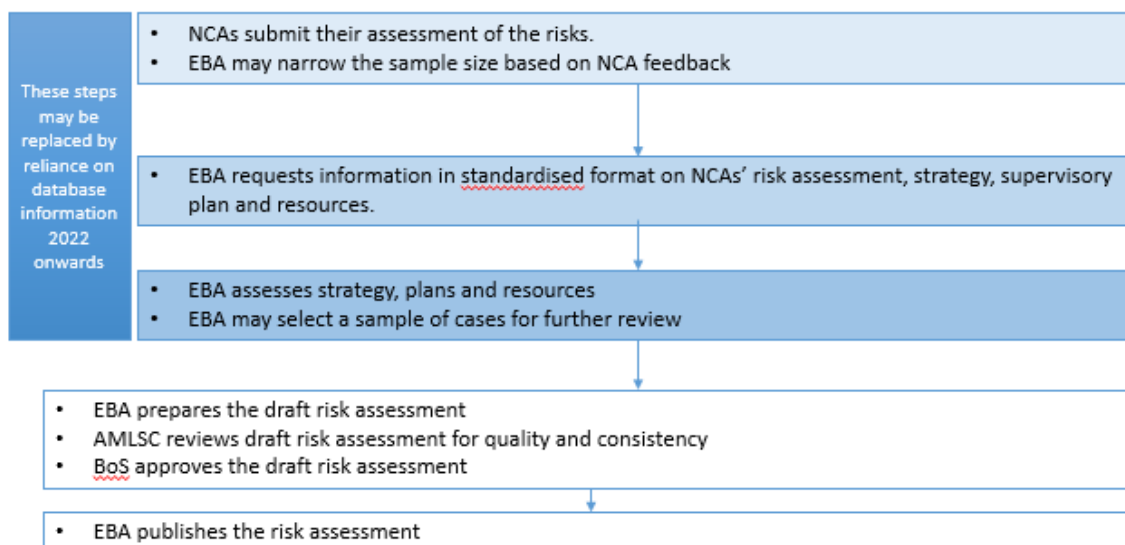
AML Implementation reviews	AML peer reviews	Risk assessment of CAs
Ongoing comprehensive assessments of competent authorities’ approaches to AML/CFT supervision. Bilateral feedback with a high-level public report.	Peer reviews focused on one specific issue across all NCAs simultaneously. Public report.	Annual strategic assessment of NCAs’ strategies, plans and resources to address specific risks. Public report.

5. Peer reviews, which are carried out in line with Article 30 of the EBA Regulation, are thematic reviews to test compliance by a cross-section of competent authorities with a particular legal requirement. Because they test compliance, they are by their nature backward-looking.
6. Implementation reviews are full-scope, comprehensive assessments of individual competent authorities’ approaches to AML/CFT supervision. Their aim is to identify best practices and support competent authorities’ risk-based supervision efforts, through bilateral feedback and guidance where appropriate. Implementation reviews do not focus on specific or cross-border risks, and they do not entail peer review or comparison. Individual implementation review reports are not public, although anonymised aggregate findings are published by the EBA at regular intervals.
7. Neither peer reviews nor implementation reviews test the ability of a cross-section of competent authorities to address specific emerging risks.

Article 9a risk assessment process

8. The methodological process for carrying out a risk assessment in accordance with Article 9a(5), as set out in Figure 1, was developed by EBA staff and presented to the BoS in July 2019. It was also shared with the AMLSC at its first meeting in February 2020. It presents risk assessments on competent authorities as an EBA staff-led, fact-finding tool to assess and support the ability of all competent authorities or a cross-section of competent authorities to address specific, strategic ML/TF risks.

Figure 1: Process for carrying out risk assessments under Article 9a of the EBA Regulation, as presented to the AMLSC in February 2020.



9. This note provides a detailed explanation of how the EBA will identify and assess risks as part of this assessment. EBA staff will follow a five-stage process:

- (1) identification of emerging risks for the assessment;
- (2) setting the scope for the assessment;
- (3) identification of competent authorities for the assessment;
- (4) conducting the Article 9a risk assessment;
- (5) outcomes of the risk assessment.

10. In the risk assessment process, EBA staff will follow the principles of proportionality, particularly when requesting the information from competent authorities. This means that, before asking for information, EBA staff will examine the information already available to it from the EBA database or other sources.

Stage 1: Identification of emerging risks for the assessment

11. The assessment will be carried out as necessary and will focus on emerging ML/TF risks that have an EU-wide impact and affect at least a number of national competent authorities. Emerging risks include new risks that have not been identified before, and existing risks that have significantly increased or taken on a new significance.

12. To identify the emerging risks for the assessment, EBA staff will refer to the SNRA, among other sources set out in paragraph 15 below. Other sources will be particularly relevant if timing is of the essence or the type of risk is not normally considered by the SRNA. Specifically:

- The SNRA is published every 2 years and is often based on information gathered in previous years. This limits the extent to which it can be used to identify emerging risks. In order to ensure that the Article 9a risk assessment can be used as a forward-

looking tool that allows national competent authorities to take action before this risk crystallises, it may be necessary to gather information from other sources as well, including the EBA database, to identify the emerging risk trends.

- The SNRA focuses solely on products. This limits the types of risks it identifies. In particular, risks relating to the systems and controls framework within financial institutions, such as derisking, or risks arising from supervision may not be captured. Therefore, EBA staff will also consult the opinion on risks published in line with Article 6(5) of the AMLD, which should form part of the SNRA.

13. When identifying emerging risks, priority will be given to those that are prevalent across sectors. In this process, EBA staff will apply the following criteria:

- risks that are relevant to three or more competent authorities in different Member States;
- how likely a particular risk is to crystallise; and
- the impact that this risk will have on the EU financial system if it crystallises.

14. When choosing risks for inclusion in a Article 9a risk assessment, EBA staff will approach the AMLSC for views on the materiality and impact of these risks.

Stage 2: Setting the scope of the assessment

15. The scope of the assessment will be determined by the nature and, as far as this is known, the expected scale of the emerging risk that is being assessed. EBA staff will develop the scope for each assessment on the basis of a variety of information sources, including but not limited to

- national and supranational risk assessments such as the national risk assessments, the SNRA, mission reports, letters to the EBA and the European Commission's staff country reports;
- information obtained from various EBA and other European Supervisory Authorities' (ESAs) databases;
- information obtained or gathered in the context of the EBA's risk products and other EBA work streams;
- information related to threat assessments, e.g. from financial intelligence units or Europol;
- information from the Financial Action Task Force and MONEYVAL mutual evaluations and other international assessment bodies, including International Monetary Fund, OECD, or the Council of Europe/GRECO);
- relevant information from whistleblowing reports and reputable media.

16. The scoping document for each assessment will be shared with the AMLSC for information before the risk assessment process commences. The AMLSC will use this document when assessing the quality and consistency of the final report.

Stage 3: Identification of competent authorities for the assessment

17. In line with Article 9a(5), EBA staff will carry out the assessment in cooperation with competent authorities, as the assessment will draw on information gathered from them.

18. The selection of competent authorities that will be included in the assessment will be largely determined by the nature of the emerging risk assessed. This means that, if a particular emerging risk is specific to one sector only, then the assessment will focus only on competent authorities responsible for the supervision of that sector. All competent authorities may be included in the assessment if the risk is cross-sectoral.
19. When deciding which competent authorities will be relevant to the assessment, EBA staff will consider the following criteria:
- an inherently high exposure to the emerging risk within the competent authority’s Member State;
 - reliable and credible¹ allegations of serious shortcomings in the AML/CFT framework of Member State where the competent authority is located;
 - shortcomings in the Member States’ AML/CFT supervisory framework highlighted by FATF or MONVEYVAL mutual evaluations or other country assessments where the supervision forms part;
 - information received from the competent authority that raises concerns about the effectiveness of the competent authority’s AML/CFT supervision and its ability to mitigate the identified risks;
 - apparent inconsistencies in the competent authority’s responses to the requests for information by EBA staff;
 - issues or weaknesses in the competent authority’s Member State highlighted by credible and reliable media sources;
 - the competent authority is responsible for the supervision of the sectors or specific products or services that are considered to be at high risk in accordance with the European Commission’s SNRA;
 - the competent authority is responsible for the supervision of those sectors where the EBA risk factor guidelines have highlighted the presence of high risk indicators;
 - the size of the competent authority;
 - if a competent authority is a host or home authority for AML/CFT purposes.
20. Based on the information received from competent authorities and information available to the EBA, EBA staff may pick a sample of competent authorities that will be subject to a more intensive review for the purpose of the assessment. The decision whether or not to select a sample for an in-depth review, and the size and nature of the sample, will depend on the risk to be assessed.
21. When defining the sample test, EBA staff should also determine whether the assessment will be desk-based or it will also involve an on-site element or other engagement with the competent authority, such as remote bilateral interviews, which may include interviews with representatives from the competent authorities or other stakeholders. The criteria determining whether an onsite inspection will be necessary include, but are not limited to:

¹According to the EBA’s Consultation Paper (JC 2019 87) for the draft Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (“The Risk Factors Guidelines”), which are amending Guidelines JC/2017/37, the credibility of allegations can be determined on the basis of the quality and independence of the source of the data and the persistence of reporting of these allegations, among other considerations. The absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing.

- whether the same information can also be assessed using a desk-based review;
 - the complexity of the risk and the associated competent authorities' responses;
 - how urgent the risk assessment is;
 - the extent to which the nature of the risk calls for an in-depth understanding of the effectiveness of competent authorities' systems and controls;
 - resource constraints at the levels of the EBA and of the competent authorities.
22. Where EBA staff have identified the need to incorporate an on-site element or bilateral interviews within the assessment, EBA staff will notify the selected competent authorities of this decision within a reasonable time and agree on the most convenient time and date for it. The scope, length and format of the on-site review or interview will also be communicated to the competent authority in advance of the visit or meeting. Following the on-site visit to the selected competent authorities, EBA staff will maintain the exchange and communication with the competent authorities that were subject of the sample testing, and these authorities will be given an opportunity to provide their feedback on any material inaccuracies in the EBA's assessment before EBA staff incorporate the findings from the sample testing into the overall risk assessment. Following the bilateral interview with the authority, EBA staff may also request additional documents supporting the discussions.
23. Following the on-site visit, the EBA will share a summary of its findings with the competent authority, which will have the opportunity to respond to any factual inaccuracies within the timeframe set by EBA staff.
24. In addition, EBA staff may also request some additional information from prudential supervisors or other stakeholders, where necessary. Such information gathering may include a survey or questionnaire, round-table discussions, bilateral meetings or discussions, or a public call for input.

Stage 4: Conducting the Article 9a risk assessment

25. EBA staff will ask the competent authorities included in the assessment to submit their assessment of the emerging risk identified in stage 1 together with the information on their strategies, resources and supervisory plans to address the risk, if not already available to the EBA within a reasonable timeframe.
26. As part of the assessment, EBA staff will assess all information gathered from competent authorities and through other sources, including the sample testing, in order to assess the prevalence and impact of the risks in different Member States and in the EU.
27. In line with Article 9a(5), the focus of the assessment will be on the extent to which competent authorities' resources, capabilities and strategies are sufficient and effective to mitigate the risks included in the assessment.

Stage 5: Outcomes from the risk assessment

28. The EBA's findings from the risk assessment will be set out in a report. The level of detail provided in the report will depend on the type and scope of the assessment.

29. In line with Article 9a(5), the draft report will be presented to the AMLSC, giving sufficient time to carry out a quality and consistency review of the report. The purpose of a quality and consistency review is to ensure that:
- the methodology has been adhered to by EBA staff when carrying out the risk assessment;
 - the EBA's description and analysis of findings support the draft conclusions and recommendations;
 - the findings and any recommendations are in line with EU law and standards and the EBA/ESA guidance, unless justified (for example because the findings reveal gaps in existing approaches);
 - the draft report is clearly drafted.
30. The AMLS will not have access to the raw data obtained for the purposes of the assessment, apart from the aggregate data provided in the report. Where personal data are used for the purposes of the risk assessment, the EBA will ensure that these data are processed in line with the applicable data protection laws.
31. Following the quality and consistency review and any changes to the draft report resulting from this review, the report will be submitted to the AMLSC for decision and thereafter to the BoS for approval.
32. Following approval by the BoS, the outcome of the risk assessment will be published on the EBA's website.
33. If, as a result of the assessment, EBA staff identify the lack of convergence in competent authorities' approaches to identifying or mitigating certain risks, the EBA, after discussion at the AMLSC, may take further steps, including publishing an opinion on the specific topic, issuing recommendations or proposing that further policy work is needed, including amendments to existing or the development of new guidance in this area, or may invoke any other powers available to the EBA under Article 9b, Article 17 or Article 22 of the EBA Regulation.
34. EBA staff may also suggest additional steps as appropriate, for example the inclusion of the findings in the next opinion under Article 6(5) of the AMLD or a proposal for a legislative change in a particular area.

Confidentiality

35. In order to be able to fulfil the EBA's mandates, and to ensure that the EBA's output takes into account the specifics of all national markets and supervisory approaches, EBA staff frequently ask national competent authorities to provide information pertinent to a particular topic.
36. Competent authorities have an obligation under Article 35 of the EBA Regulation to provide the EBA with the information needed to carry out its tasks. The EBA has a similar duty under Article 35 to share information that it holds and that competent authorities need for the purpose of their tasks.

37. The EBA has an interest in ensuring that competent authorities provide as full a response as possible to its requests. EBA staff therefore use the information only in order to carry out the EBA's tasks or to assist other members of the European System of Financial Supervision. The EBA does not otherwise share the information unless there is a legal obligation to do so.
38. One area where the EBA has a legal obligation is when it receives requests for public access to documents (AtD requests) from external stakeholders, which occasionally refer to documents provided by competent authorities. After receiving such an AtD request, the EBA always carries out an assessment of it and systematically consults competent authorities for their views on whether any exemption from disclosure under EU law should be applied. These exemptions include, for example, obligations of commercial confidentiality and professional secrecy; protection of the purpose of inspections, investigations and audits; protection of court proceedings and legal advice; and protection of ongoing decision-making at the EBA.
39. Competent authorities can therefore expect that any disclosure will be agreed with them and the EBA will rely on any reasonable case put forward by a competent authority for non-disclosure. In the unlikely and exceptional circumstance that agreement cannot be reached, the matter can be escalated to the EBA's Executive Director to review the matter and discuss it with the authority concerned.