

EBA/CP/2023/05

29 March 2023

Consultation Paper

Guidelines amending Guidelines EBA/GL/2021/16 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 under Article 48(10) of Directive (EU) 2015/849 (The Risk-Based Supervision Guidelines)

Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	6
4. Draft Guidelines amending the Risk-Based Supervision Guidelines	10
5. Accompanying documents	23
5.1 Draft cost-benefit analysis / impact assessment	23
5.2 Overview of questions for consultation	26

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

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 EBA should consider.

Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 29.06.2023. 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 EBA’s 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 EBA’s Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

In July 2021 the European Commission issued a legislative package with four proposals to reform the EU's legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework. The legislative package included a proposal for a recast of Regulation (EU) 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (FTR).

According to the 'Provisional Agreement Resulting from Interinstitutional Negotiations' of 5 October 2022 (2021/0241 (COD)) (hereafter 'Provisional Agreement') the co-legislators intended to extend the scope of Regulation (EU) YYYY/XX [to insert FTR reference once published]¹ to transfers of crypto-assets. It also amends Directive (EU) 2015/849 to subject crypto-asset service providers to the same AML/CFT requirements and AML/CFT supervision as credit and financial institutions. With this change, and given that the Risk-Based Supervision Guidelines apply to credit and financial institutions under that Directive, the scope of the guidelines is automatically extended.

Article 30(3) of the Provisional Agreement envisages a mandate for the EBA to issue guidelines on the risk-based approach to AML/CFT supervision of crypto-asset service providers by competent authorities. In preparation of the upcoming mandate, the EBA is proposing to revise the Risk-Based Supervision Guidelines.

The revised guidelines:

- emphasise the importance of cooperation among competent authorities, other stakeholders and prudential supervisors;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions;
- provide guidance on the sources of information available to competent authorities when supervising crypto-asset service providers;
- set out how competent authorities should determine the type of guidance needed within the sector and how to communicate this guidance in the most effective manner; and

¹ To be completed once the FTR is published. The issuance of these guidelines will be aligned both with the entry into force of the recast FTR and new MiCAR.



- stress the importance of training to ensure that staff from competent authorities are well trained and have the technical skills and expertise necessary for the execution of their functions, including the supervision of crypto-assets service providers.

Next steps

The draft guidelines are published for a 3-months public consultation. The EBA will finalise these guidelines once the consultation responses have been assessed. There is no consultation on the text of the original guidelines that has not changed.

3. Background and rationale

3.1 Background

1. In July 2021 the European Commission issued a legislative package with four proposals to reform the EU's legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework. The legislative package included a proposal for a recast of Regulation (EU) 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 ('FTR').
2. According to the 'Provisional Agreement Resulting from Interinstitutional Negotiations' of 5 October 2022 (2021/0241 (COD)) (hereafter 'Provisional Agreement') the co-legislators intended to extend the scope of Regulation (EU) YYYY/XX [to insert FTR reference once published] to transfers of crypto-assets. It also amends Directive (EU) 2015/849 to subject crypto-asset service providers to the same AML/CFT requirements and AML/CFT supervision as credit and financial institutions. With this change, and given that the Risk-Based Supervision Guidelines apply to credit and financial institutions under that Directive, the scope of the guidelines is automatically extended.
3. Article 30(3) of the Provisional Agreement envisages a mandate for the EBA to issue guidelines on the risk-based approach to AML/CFT supervision of crypto-asset service providers by competent authorities. In preparation of the upcoming mandate, the EBA is proposing to revise the Risk-Based Supervision Guidelines.

3.2 Rationale

1. In preparation of this upcoming mandate, the EBA performed an analysis of the Risk-Based Supervision Guidelines to establish whether new, or additional guidance was necessary to fulfil this mandate.
2. The EBA concluded that the risk-based approach to AML/CFT supervision set out in these guidelines was adequate and could be extended to AML/CFT supervisors of crypto-asset services providers. It also concluded that several provisions would benefit from further clarification to reflect the nature of crypto-asset services and the impact this has for supervisory purposes. This section explains the rationale for the proposed amendments.
3. The scope of the consultation, and of the consultation questions, is limited to those amendments and additions. The draft amending guidelines are published for a three-months public consultation.



Amendments to ‘Subject matter, scope and definitions’

4. Article 30(3) of the Provisional Agreement envisages a mandate for the EBA to issue guidelines on the risk-based approach to AML/CFT supervision of crypto-asset service providers by competent authorities. That is why the EBA proposes to include this mandate in the subject matter of the existing guidelines.

Question 1: Do you have any comments with the proposed changes to the ‘Subject matter, scope and definitions’? Please note that only comments in respect of the changes can be considered.

Amendments to ‘Guideline 4.1: Implementing the RBS Model’

5. This Guideline contains references to the joint ESMA and EBA ‘Fit and Proper’ Guidelines² and the EBA’s internal governance Guidelines³ that do not apply to AML/CFT supervisors of crypto-asset service providers. The provisions in these guidelines are nevertheless relevant and AML/CFT supervisors should consider applying these guidelines until relevant guidelines under Regulation (EU) YYYY/XX [to insert MiCA reference once published]⁴ have been issued.

Question 2: Do you have any comments with the proposed changes to the Guideline 4.1 ‘Implementing the RBS model’? Please note that only comments in respect of the changes can be considered.

Amendments to ‘Guideline 4.2: Step 1 – Identification of risk and mitigating factors’

6. The Guidelines provide that competent authorities should identify and understand the risk factors that will affect each sector and subject of assessment’s exposure to ML/TF risks. Competent authorities should identify these risk factors based on information from a variety of sources. The amendments to this Guideline provide guidance on these sources of information available to competent authorities when supervising crypto-asset service providers.
7. The EBA also proposes to include a direct reference to crypto-assets service providers to ensure that they are now considered in scope where relevant to the supervisory work.

Question 3: Do you have any comments on the proposed changes to the Guideline 4.2 ‘Step 1 – Identification of risk and mitigating factors’? Please note that only comments in respect of the changes can be considered.

Amendments to ‘Guideline 4.3: Step 2 – Risk assessment’

8. Competent authorities should assess the extent to which AML/CFT systems and controls are adequate to effectively mitigate the inherent risks to which the subject of assessment is exposed. The EBA proposes to include a reference to 19a Directive (EU) 2015/849 to provide for

² Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, [EBA/GL/2021/06](#).

³ EBA’s Guidelines on internal governance under Directive 2013/36/EU, [EBA/GL/2021/05](#).

⁴ To be completed once the MiCA Regulation is published. The issuance of these guidelines will be aligned both with the entry into force of the recast FTR and new MiCAR.



the specific AML/CFT systems and controls that crypto-asset service providers should have put in place and should apply.

Question 4: Do you have any comments on the proposed changes to the Guideline 4.3 ‘Step 2 – Risk assessment’? Please note that only comments in respect of the changes can be considered.

Amendments to ‘Guideline 4.4: Step 3 – Supervision’

9. As set out in the revised Guidelines, competent authorities should determine and implement a longer-term AML/CFT supervisory strategy. In the strategy, competent authorities should set clear objectives for their approach to AML/CFT supervision and set out how these objectives will be achieved within a defined timeframe and with available resources. As part of this, a supervisory strategy should determine the supervisory resources necessary to implement the supervisory strategy and ensure that sufficient resources are available to them. When determining the necessary resources, competent authorities should also consider the technological resources they need to perform their functions effectively, for example to be able to assess the adequacy of any software or other technological tools their subjects of assessment use to comply with their AML/CFT obligations. This will be particularly important where technology is essential to how the specific sectors operate.
10. In addition, the EBA proposes amendments to set out how competent authorities should determine the type of guidance needed within the sector and how to communicate this guidance in the most effective manner.
11. Finally, the amendments the EBA proposes in this Guideline stress the importance of training to ensure that staff from competent authorities are well trained and have the tools, technical skills, and expertise necessary for the execution of their functions, including the supervision of crypto-assets service providers.

Question 5: Do you have any comments on the proposed changes to the Guideline 4.4 ‘Step 3 – Supervision’? Please note that only comments in respect of the changes can be considered.

Amendments to ‘Guideline 4.5: Step 4 – Monitoring and updating of the RBS Model’

12. Competent authorities should periodically review whether their AML/CFT RBS Model delivers the intended outcome. Competent authorities should use a variety of tools available to them when reviewing and assessing the adequacy and effectiveness of their AML/CFT RBS Model. In its proposed amendments, the EBA emphasises the importance of technical expertise when reviewing and assessing the adequacy and effectiveness of competent authorities AML/CFT RBS Model, considering the fast-paced technological developments.

Question 6: Do you have any comments on the proposed changes to the Guideline 4.5 ‘Step 4 – Monitoring and updating of the RBS Model’? Please note that only comments in respect of the changes can be considered.



Editorial amendments to reflect the scope of the supervisory work

13. Finally, the EBA made a number of changes that are of an editorial, a presentational or a structural nature.

4. Draft Guidelines amending the Risk-Based Supervision Guidelines

EBA/GL/2023/XX

DD Month YYYY

Draft Guidelines amending Guidelines EBA/GL/2021/16

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 under Article 48(10) of Directive (EU) 2015/849

The Risk-Based Supervision Guidelines

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁵. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

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

⁵ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Addressees

5. These guidelines are addressed to competent authorities as defined in Article 4 point (2)(iii) of Regulation (EU) No 1093/2010.

3. Implementation

Date of application

6. These guidelines apply the latest by **dd.mm.yyyy**.

4. Amendments

(i) Amendments to Subject matter, scope and definitions

7. Paragraph 5 is amended as follows:

‘These guidelines specify in accordance with Article 48(10) of Directive (EU) 2015/8498 and Article 30(3) Regulation (EU) YYYY/XX [to insert FTR reference once published] the characteristics of a risk-based approach to anti-money laundering and countering the financing of terrorism (AML/CFT) supervision and the steps competent authorities should take when conducting AML/CFT supervision on a risk-sensitive basis.’

(ii) Amendments to Guideline 4.1: Implementing the RBS Model

4.1.3 Subjects of assessment

8. Paragraph 19 is amended as follows:

‘Where a competent authority knows, or has reasonable grounds to suspect, that the risk associated with an individual credit institution or financial institution in a cluster varies significantly from that associated with other credit institutions or financial institutions in that cluster, the competent authority should remove that credit institution or financial institution from the cluster and assess it either individually, or as part of a different cluster of credit institutions or financial institutions, which are exposed to a similar level of ML/TF risk. The removal from a cluster should include, inter alia, circumstances where:

- the credit institution or financial institution is beneficially owned by individuals whose integrity is in doubt due to ML/TF concerns, or
- the credit institution’s or financial institution’s internal control framework is deficient which has an impact on the credit institution’s, or financial institution’s residual risk rating, or
- the credit institution or financial institution has introduced significant changes to its products or services, or may have combined those changes with changes in delivery channels, its customer base or different geographic areas where the services or products are delivered.

When assessing these points, competent authorities should take into account suitability assessments made under the prudential frameworks, in particular, where applicable, assessments in relation to the suitability of members of the management body and of the heads of internal control functions, including those assessments made under the joint ESMA and EBA

‘Fit and Proper’ Guidelines⁶ and the EBA’s internal governance Guidelines⁷.

In case of crypto-asset service providers, competent authorities should consider applying the joint ESMA and EBA ‘Fit and Proper’ Guidelines and Titles II, III, IV and V of the EBA internal governance guidelines for AML/CFT purposes mutatis mutandis until relevant guidelines under MiCA have been issued.’

4.1.4 Cooperation

9. Paragraph 22 is amended as follows:

‘Competent authorities should consider the extent and objective of their cooperation and information exchange with other stakeholders, which may determine the most effective way for this cooperation, as the same approach may not be suitable in all circumstances. Competent authorities should in particular ensure that they cooperate effectively with those authorities that are responsible for the conduct and prudential supervision of the same subject of assessment.’

(iii) Amendments to Guideline 4.2: Step 1 – Identification of risk and mitigating factors

4.2.2 Sources of information

10. Paragraph 30 current letter m) is amended as follows:

‘m) supervisory authorities responsible for the supervision of subjects of assessment’s compliance with prudential requirements, including competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010, Article 4(2) of Regulation (EU) No 1094/2010, and Article 4(2) of Regulation (EU) No 1095/2010, where applicable;’

11. In paragraph 31 the following new letters are inserted:

‘k) outcomes of analysis of advanced analytics tools such as blockchain analytics; or’

‘l) notifications of repeatedly failing payment service providers or crypto-asset service providers submitted to the responsible competent authorities in accordance with Articles 8(2), 12(2), 17(2) and 18 c(2) of Regulation (EU) YYYY/XX [to insert FTR reference once published], to the extent that these providers fall within the competent authority’s supervisory scope.’

⁶ Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, [EBA/GL/2021/06](#).

⁷ EBA’s Guidelines on internal governance under Directive 2013/36/EU, [EBA/GL/2021/05](#).

4.2.5 Sector-wide ML/TF risk factors

12. Paragraph 37 is amended as follows:

‘Competent authorities should have a good understanding of the risk factors that are relevant for all sectors under their supervision. In order to identify relevant risk factors in the relevant sectors, competent authorities should first define the sectors under their supervision. To inform their view of the sectors, competent authorities should refer to the categories of obliged entities listed in Directive (EU) 2015/849, which include credit institutions, credit providers (other than credit institutions, for example consumer credit, factoring, leasing, mortgage credit and commercial credit), life insurance undertakings, life insurance intermediaries, e-money institutions, payment institutions, ‘bureaux de change’, investment firms, collective investment undertakings and crypto-asset service providers.’

13. Paragraph 38 is amended as follows:

‘Depending on the size of a sector and the nature of subjects of assessment within it, competent authorities should consider dividing sectors further into subsectors. This may be necessary when a sector is made up of subjects of assessment that are very diverse because a substantial proportion of subjects of assessment share similar features and business models that set them apart from the rest of the sector. Similar features include, but are not limited to, the type of products and services offered, the delivery channels used and the type of customers they service. Examples of subsectors include money-remitters, private banks, brokerage firms, and crypto-asset exchanges which represent subsectors of payment institutions, credit institutions, investment firms, and crypto-asset service providers respectively. To inform their view on sectors and subsectors and their specific features, competent authorities should refer to the Title II of the EBA’s AML/CFT Risk Factors Guidelines.’

4.2.6 Type of information necessary to identify risk factors

14. In paragraph 41 letter l is inserted:

‘l) the (infrastructure) technology prevalent in the sector, in particular where this is essential to the sector’s business model and operation (such as Distributed Ledger Technology (DLT)).’

15. Paragraph 44 letter c and letter f are amended as follows:

‘c) the nature and complexity of the products and services provided and the activities and (the type of) transactions carried out;’

‘f) the geographical area of the business activities, in particular where they are carried out in

or located in high-risk third countries⁸, including, where applicable, the countries of origin or establishment of a significant part of the subject of assessment's customers and the geographical links of its qualifying shareholders or beneficial owners;'

16. In paragraph 45 letter a) the following point is inserted:

'v) from advanced analytics tools and platforms where services of the subject of assessment are provided using DLT or blockchain technology.'

(iv) Amendments to Guideline 4.3: Step 2 – Risk assessment

4.3.3 Individual risk assessments

17. Paragraph 59 letter a is amended as follows:

'a) that the AML/CFT systems and controls listed in Article 8(4) and 19a of Directive (EU) 2015/849 are put in place and applied. These controls should be sufficiently comprehensive and commensurate with the ML/TF risks;'

(v) Amendments to Guideline 4.4: Step 3 – Supervision

4.4.2 Supervisory strategy

18. Paragraph 78 letter e is amended as follows:

'e) determine the supervisory resources necessary to implement the supervisory strategy and ensure that sufficient resources are available to them. When determining the necessary resources, competent authorities should also consider the technological resources they need to perform their functions effectively, in particular where technology is essential to how the specific sectors operate;'

4.4.4 Supervisory tools

19. Paragraph 94 is amended as follows:

'In some instances, competent authorities should consider whether the combination of two or more tools may be more effective. This includes situations where the competent authority is concerned about the accuracy of information received during off-site reviews or as part of AML/CFT returns. In such circumstances, it may be necessary for competent authorities to verify this information through an on-site inspection, which generally contains such elements

⁸ EBA Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849, [EBA/GL/2021/02](#).

as sampling of transactions and customer files, and interviews with key personnel and members of the management body. Competent authorities should be able to carry out ad hoc inspections when necessary, which do not form part of their supervisory strategy and plan. The need for such inspections may be triggered by a specific event, which may expose the sector/ subsector or subjects of assessment to an increased ML/TF risk, significant changes in the ML/TF risk exposure of the sector/ subsector or subjects of assessment or happen as a result of discovery of certain information by the competent authority, including through whistleblowing reports, widespread public allegations of wrongdoing, information from any other relevant authority, a new ML/TF typology or supervisory findings relating to AML/CFT systems and controls or a wider internal controls framework. Where the competent authority has decided that an ad hoc inspection is warranted, it should determine the scope of the inspection, the focus of the inspection and whether it will involve any on-site elements and if there is a need to involve and cooperate with other supervisors.'

4.4.5 Supervisory practices and the supervisory manual

20. Footnote 23 on page 42 is amended as follows:

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

21. Footnote 24 on page 42 is amended as follows:

'In accordance, in particular, with paragraph 19 of the EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU.'

22. Paragraph 101 letter c point i) is amended as follows:

'i) the adequacy of relevant policies and procedures and whether they are linked to the business-wide risk assessment and whether these policies and procedures are reviewed and, if necessary, updated whenever the business-wide risk assessment changes;'

4.4.8 Supervisory follow-up

23. Paragraph 117 is amended as follows:

'Where competent authorities have suspicions that the failure to implement effective systems and controls may be deliberate, they should consider a more robust follow-up action, which would ensure an immediate cessation of such behaviour by the subject of assessment. In such circumstances, competent authorities should cooperate, exchange information on and, where necessary, coordinate actions with respect to the subject of assessment's failures with

prudential supervisors.’

4.4.9 Feedback to the sector

24. In paragraph 125 letter f is inserted:

‘f) concerns about the quality and usefulness of suspicious transaction reports.’

25. Paragraph 126 letter a and letter b are amended as follows:

‘a) facilitates and supports the implementation, by subjects of assessment, of an effective risk-based approach, including through the publication of best practices identified in the sector;’

‘b) does not directly or indirectly foster or condone the indiscriminate de-risking of entire categories of customers in accordance with the Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services under Directive (EU) 2015/849 and the EBA’s ML/TF Risk Factor Guidelines and in particular Guidelines 4.9., 4.10. and 4.11.⁹;’

26. In paragraph 126 letter c is inserted:

‘c) where multiple competent authorities are responsible for the AML/CFT supervision of subjects of assessment in the same sector in the Member State, these competent authorities should co-ordinate their actions and consider issuing joint guidance to set consistent expectations. Competent authorities should consider whether other authorities may be responsible for issuing guidance on related matters and if so, coordinate with those authorities as appropriate.’

27. Paragraph 127 is amended as follows:

‘Competent authorities should consider engaging with subjects of assessment and other relevant stakeholders when developing supervisory guidance and should determine the most effective way for this outreach. The engagement may include, among other things, a public consultation process, engagement with the sector, in particular where a sector is new to regulation or supervision, engagement with trade associations, financial intelligence units, law enforcement, other competent authorities or government agencies or through participation in consultative forums. Competent authorities should ensure that the outreach includes a sufficient proportion of stakeholders who will be impacted by the guidance and that sufficient time is allocated for stakeholders to communicate their views.’

⁹ EBA Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (‘The ML/TF Risk Factors Guidelines’) under Articles 17 and 18(4) of Directive (EU) 2015/849, [EBA/GL/2021/02](#).

28. Paragraph 128 is amended as follows:

'Competent authorities should periodically assess the adequacy of their existing guidance provided to the sector, in particular where a sector is new to regulation or supervision. Such assessment should be done regularly or on an ad hoc basis, and may be triggered by certain events, including changes in the national or European legislation, amendments to the national or supranational risk assessment or based on the feedback from the sector. Where competent authorities determine that the existing guidance is no longer up to date or relevant, they should communicate the necessary amendments to the sector without undue delay.'

4.4.10 Training of competent authority's staff

29. Paragraph 133 is amended as follows:

'Competent authorities should develop a training programme, which should be adjusted to meet the needs of specific functions within the competent authority, taking into account the characteristics of the sectors under their supervision, their job responsibilities, seniority and experience of staff. Competent authorities should ensure that relevant staff has sufficient technical expertise for the supervision of the subjects of assessment. This training program should be kept up to date and reviewed regularly. Competent authorities should monitor the level of training completed by individual staff members or entire teams as appropriate.'

30. A new paragraph 133A is inserted:

'133A. Where competent authorities use services of external parties to carry out (some parts of) their supervisory plan or a specific supervisory task as referred to in section 4.4.7, or otherwise delegate supervisory tasks to other supervisory authorities, competent authorities should also consider including any such external party within its training programme.'

31. Paragraph 134 letter c and letter d are amended as follows:

'c) assess the adequacy, proportionality and effectiveness of subjects of assessment's AML/CFT policies and procedures, including any software or other technological tools, and wider governance arrangements and internal controls in light of subjects of assessment's own risk assessment and business models;'

'd) understand different products, services and financial instruments, and the risks to which they are exposed, including those associated with the underlying technologies used in the provision of those products, services and instruments;'



32. Paragraph 135 is amended as follows:

‘Training should be tailored to the AML/CFT responsibilities of relevant staff, and senior management, and may include internal and external training courses and conferences, e-learning courses, newsletters, case study discussions, recruitment, feedback on completed tasks and other forms of ‘learning by doing’. Where necessary and appropriate, competent authorities should also consider filling existing knowledge gaps through strategic hires or draw on the support of in-house specialists such as IT specialists.’

33. A new paragraph 135A is inserted:

‘135A. Where multiple competent authorities are responsible for the AML/CFT supervision of the same sector in the Member State, competent authorities should consider providing joint training, to achieve a common understanding of the applicable framework and how it should be applied, and a consistent supervisory approach. Competent authorities may also benefit from knowledge-sharing among competent authorities and with other relevant domestic and foreign authorities, such as prudential supervisors, the FIU, relevant EU bodies, and other countries’ AML/CFT supervisors.’

(vi) Amendments to Guideline 4.5: Step 4 – Monitoring and updating of the RBS Model

4.5.2 Review of the AML/CFT RBS Model

34. In paragraph 148 subparagraph a is amended as follows:

‘a) Professional and technical expertise;’

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis presents the IA of the main policy options included in this Consultation Paper on the *draft Guidelines amending the revised Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing (‘ML/TF’) supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72)* (‘the draft Guidelines’). The IA is high level and qualitative in nature.

A. Problem identification and background

Directive (EU) 2015/849, in line with international standards in combating money laundering and the financing of terrorism developed by FATF, puts the risk-based approach at the centre of the EU’s ML/TF regime and its Article 48(6), requires competent authorities, when carrying out risk-based supervision to have a clear understanding of ML/TF risks in their jurisdiction, access to relevant information through both on-site and off-site supervisory activities and to adjust intensity and frequency of their risk-based supervision in line with the level of ML/TF risk presented by firms under their supervision. These requirements were complemented by the mandate given to the EBA under Article 48(10) of the same Directive requesting to issue guidelines containing the characteristics of a risk-based approach and the steps to conduct risk-based supervision. In this context, the EBA, together with EIOPA and ESMA, published the Joint Guidelines ESAs/2016/72 on 16 November 2016. In order to be in line with the updated ML/TF framework, these Guidelines were revised in December 2021 when the EBA published *the revised 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 under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72)* (‘the revised Guidelines’).

Besides, in July 2021, the European Commission published an AML/CFT package consisting of 4 legislative proposals. One of these proposals was the recast of Regulation (EU) 2015/847 (‘The Transfer of Funds Regulation’ or ‘TFR’) in order to extend its scope to transfers of crypto-assets, in line with the FATF’s standards. The co-legislators reached a provisional agreement on the TFR recast on 29th June 2022. In this recast the EBA was given ten legislative mandates and one of them is given by its Article 30 *‘The EBA shall issue guidelines, addressed to competent authorities, on the characteristics of a risk-based approach to supervision of crypto-asset service providers and the*



steps to be taken when conducting supervision on a risk-based basis'. Hence its Article 30(b) amends Article 3(2) of Directive (EU) 2015/849 to subject crypto-asset service providers ('CASPs') to the same ML/TF requirements and ML/TF supervision as credit and financial institutions.

To meet this mandate of Article 30 of the TFR recast, the EBA's view is to leverage on the revised Guidelines.

B. Policy objectives

Following the above-mentioned changes, the objectives are to ensure that the revised Guidelines will guide competent authorities on the characteristics of a risk-based approach to supervision of CASPs and the steps to be taken when conducting their supervision on a risk-based basis.

C. Options considered, assessment of the options and preferred options

Section C. presents the main policy options discussed and the decisions made by the EBA during the development of the draft Guidelines. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

Inclusion of CASPs in the revised Guidelines

The revised Guidelines are addressed to the competent authorities (CAs) supervision of credit and financial institutions but were not covering supervision of all CASPs as CASPs did not fall under the definition of credit or financial institutions (only two types of CASPs such as providers engaged in exchange services between virtual currencies and fiat currencies and the custodian wallet providers were obliged entities). With the TFR recast and the modification of Article 3(2) of Directive (EU) 2015/849, all CASPs will be included in the definition of 'financial institutions' and, de facto, included in the revised Guidelines. In this context, two options have been considered by the EBA in this regard:

Option 1a: Not amending the revised Guidelines further than the, de facto, inclusion of the CASPs in the definition of 'financial institutions' foreseen by the modification of Article 3(2) of Directive (EU) 2015/849

Option 1b: Amending the revised Guidelines further than the, de facto, inclusion of the CASPs in the definition of 'financial institutions' foreseen by the modification of Article 3(2) of Directive (EU) 2015/849 in order to reflect CASPs supervision specificities

The EBA performed a review of the revised Guidelines and noticed that the risk-based approach to ML/TF supervision set out in these guidelines could be extended to AML/CFT supervisors of CASPs but also that several provisions would benefit from further clarification to reflect the nature of crypto-asset services and the impact this has for supervisory purposes. For instance, CASPs particularities that would benefit from additional guidance are their technical characteristics like



specific infrastructure technology (such as Distributed Ledger Technology (DLT)). Indeed, the competent authorities would for instance have to adapt to this new technology in the areas of the type of information necessary to identify risk factors, the risk assessment, and in the area of the human resources (i.e. competent authority's staff trainings) dedicated to such supervision. The costs related to the amendments of the draft Guidelines would not be material as the main costs are not triggered by these amendments but by the FTR recast and the modification of Article 3(2) of Directive (EU) 2015/849, where the CASPs were included in the 'financial institutions' definition and, de facto, included in the revised Guidelines. As such, the costs of the draft Guidelines would be exceeded by the previously mentioned benefits.

On these grounds, **the Option 1b has been chosen as the preferred option** and the draft Guidelines will amend the revised Guidelines further than the inclusion of the CASPs in the definition of 'financial institutions' foreseen by the modification of Article 3(2) of Directive (EU) 2015

D. Conclusion

The development of draft Guidelines amending the revised Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing ('ML/TF') supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (amending the Joint Guidelines ESAs 2016 72) was deemed necessary to reflect the nature of CASPs and the impact this has for supervisory purposes. The costs associated with the amendments of the draft Guidelines will be exceeded by the aforementioned benefits. These draft Guidelines hence should achieve, with acceptable costs, their objectives of ensuring that the revised Guidelines will guide competent authorities on the characteristics of a risk-based approach to supervision of CASPs and the steps to be taken when conducting their supervision on a risk-based basis.

5.2 Overview of questions for consultation

1. Do you have any comments with the proposed changes to the ‘Subject matter, scope and definitions’?
2. Do you have any comments with the proposed changes to the Guideline 4.1 ‘Implementing the RBS model’?
3. Do you have any comments on the proposed changes to the Guideline 4.2 ‘Step 1 – Identification of risk and mitigating factors’?
4. Do you have any comments on the proposed changes to the Guideline 4.3 ‘Step 2 – Risk assessment’?
5. Do you have any comments with the proposed changes to the Guideline 4.4 ‘Step 3 – Supervision’?
6. Do you have any comments on the proposed changes to the Guideline 4.5 ‘Step 4 – Monitoring and updating of the RBS model’?