



EBA REPORT

ON THE FUNCTIONING OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING COLLEGES IN 2021

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Abbreviations

AM	asset managers
AML	anti-money laundering
CDD	customer due diligence
CI	credit institutions
CFT	countering the financing of terrorism
EBA	European Banking Authority
EDD	enhanced due diligence
EMI	Electronic money institutions
EuReCA	European reporting system for material CFT/AML weaknesses
FATF	Financial Action Task Force
FIU	financial intelligence unit
FM	Fund managers
IF	investment firms
LIU	life insurance undertaking
ML	money laundering
NRA	national risk assessment
PEP	politically exposed person
PI	payment institutions
SNRA	supranational risk assessment
SREP	supervisory review and evaluation process
STR	suspicious transactions report
TF	terrorist financing

Executive summary

The guidelines (JC 2019 81) on cooperation and information exchange for the purpose of Directive (EU) 2015/849 (AMLD) between competent authorities supervising credit and financial institutions (the ‘Guidelines’) were published by the three European Supervisory Authorities in December 2019. The Guidelines set out the cooperation framework, which is based on AML/CFT colleges. AML/CFT colleges are permanent structures that bring together different supervisory authorities responsible for the supervision of a cross-border financial institution, which operates in at least three Member States and outside the EU.

In addition to fulfilling its legal duty to lead, coordinate and monitor the AML/CFT efforts across the EU, the EBA is also a permanent member in all AML/CFT colleges. To that end, in 2021, EBA staff actively monitored 21 newly established and 16 existing AML/CFT colleges across a wide range of financial institutions and Member States. This report provides examples of good practices observed by EBA staff when attending AML/CFT colleges, which the lead supervisors and other permanent members should consider adopting to ensure effective cooperation in their colleges. It also flags areas that may require more focus from competent authorities when establishing or maintaining AML/CFT colleges going forward.

The EBA observed that competent authorities across the EU are committed to implementing the AML/CFT colleges framework effectively. This became evident from the resources allocated to work on the establishment and implementation of colleges and from the supervisors’ engagement at the college meetings. EBA staff also observed that supervisors’ participation in AML/CFT colleges enhanced cooperation, with increasing number of exchanges of information between supervisors within the AML/CFT colleges. In particular, AML/CFT supervisors shared information about their assessment of ML/TF risks associated with the cross-border institution in their Member States, as well as findings from inspections and any administrative sanctions or supervisory measures imposed by them on the institution.

Nevertheless, while the functioning of AML/CFT colleges keeps improving, it became evident to EBA staff that most colleges have not reached their maturity yet. Some of the examples of that include:

- In several colleges, important information, such as a significant adverse inspection finding or allegations of large-scale money laundering that emerged outside the scheduled college meeting, was shared within the college only after EBA staff specifically requested it. This highlights that AML/CFT colleges have not yet achieved their goal whereby emerging risks are communicated to and acted upon by all college members at an early stage before they have crystallised.
- Many AML/CFT colleges were established and held their first meeting only in 2021, which meant that many of them experienced operational challenges associated with the

finalisation of cooperation agreements and terms of participation of observers. In most of these colleges, observers from third countries did not participate due to the challenges with the assessment of equivalence of these observers. This means that these colleges have not yet met in their full composition and have not yet held comprehensive discussions on the ML/TF risks at a group level.

To further improve the functioning of AML/CFT colleges going forward, EBA staff propose that the lead supervisors and other college members take the following six actions, based on best practices observed in AML/CFT colleges so far:

- a. to finalise the structural elements of AML/CFT colleges, including the Cooperation Agreement and Terms of Participation of observers;
- b. to enhance discussions during the AML/CFT college meetings;
- c. to foster the ongoing exchange of information within colleges;
- d. to apply risk-based approach to college meetings;
- e. to take steps to identify areas for common approach or joint actions;
- f. to enhance supervisory convergence in AML/CFT colleges.

The EBA encourages all supervisors to make use of the practices and observations set out in this report and adjust their approach where necessary.

In 2022, the EBA will continue to monitor and provide technical support to competent authorities in this process to ensure that AML/CFT colleges function effectively and achieve their objectives.

1. Background

1.1 Introduction

1. The legal basis for anti-money laundering and countering the financing of terrorism supervisory colleges ('AML/CFT colleges') is set out in Article 57a(4) of Directive (EU) 2015/849¹ ('AMLD'). The afore-mentioned Article 57a(4) contains a high-level requirement for 'competent authorities supervising credit and financial institutions to cooperate with each other to the greatest extent possible, regardless of their respective nature or status'. Further details and practical modalities of this cooperation are specified in the joint Guidelines (JC 2019 81) on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (the 'Guidelines') published by the European Supervisory Authorities (ESAs) in December 2019.
2. Some of the AML/CFT scandals involving cross-border European banks highlighted the lack of cooperation between the supervisors responsible for supervising these banks. As a result, emerging ML/TF risks were able to crystallise resulting in an increased ML/TF risk exposure to the entire group. It was evident that in the absence of a formal framework, the cooperation between supervisors was often limited or not always happening in practice. Therefore, the Guidelines aim to enhance cooperation and information exchange between various supervisors responsible for the supervision of cross-border financial institutions, including where applicable through AML/CFT colleges, which should be set up for each financial institution that operates in at least three different EU Member States. The Guidelines define the framework for AML/CFT colleges, which are permanent structures consisting of permanent members and observers. In AML/CFT colleges, AML/CFT and prudential supervisors can exchange views on risks to which the financial institution is exposed in different jurisdictions, including third countries, and how well it is equipped to manage these risks.
3. AML/CFT colleges are also an important tool for enhancing convergence of supervisory practices through sharing of experiences and discussions on supervisory activities and outcomes as well as through joint supervisory activities agreed within the college.
4. Taking into account the fundamental changes that were necessary to implement the AML/CFT colleges framework across the EU, competent authorities were given 2 years to take the necessary steps to implement the Guidelines by January 2022.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

5. This is the second report² published by the EBA on the functioning of AML/CFT colleges in the EU. It provides an overview of AML/CFT colleges that were established or continued operating in 2021 and summarises the EBA staff's observations from AML/CFT colleges attended during 2021. The report focusses on the level of cooperation at the college meetings and beyond and on the content of discussions between members and observers. EBA staff found that in most colleges the discussions focused on the institution's exposure to ML/TF risks, as well as early signals of emerging risks, supervisory activities and administrative sanctions or measures, which is broadly in line with Guidelines. In the report, EBA staff identify good and poor practices observed by them in AML/CFT colleges and make some recommendations how the functioning of individual AML/CFT colleges could be improved in the future.
6. To develop this report, the EBA used various sources of information including the notifications from lead supervisors of the establishment of AML/CFT colleges, bi-lateral feedback provided by EBA staff to the lead supervisors after the college meetings attended by EBA staff, information gathered in AML/CFT colleges and exchanges with EBA staff involved in colleges of prudential supervisors and resolution colleges.

1.2 Overview of AML/CFT colleges in the EU

7. In 2021, a total of 120 newly established AML/CFT colleges met for the first time, bringing the total number of functioning AML/CFT colleges to 138 (refer to Figure 1 for more details). In addition, the EBA was notified of a further 89 AML/CFT colleges that were established in 2021 but were scheduled to meet only in 2022 or, in some cases, 2023. The establishment and operation of colleges can be resource intensive. That means that the application of a risk-based approach to the operation of these colleges is important to ensure the best use of supervisory resources.
8. In most Member States, the banking sector accounted for most AML/CFT colleges. This was expected, as this sector or individual institutions within it are rated as high risk or very high risk for AML/CFT purposes in most Member States, and because the Guidelines provide that lead supervisors prioritise the establishment of colleges for high-risk institutions. Other high-risk sectors, where the EBA saw colleges being established, include payment institutions and electronic money institutions. However, EBA staff observed a shift from 2020 whereby competent authorities have moved to setting up colleges also for medium and low risk institutions, particularly in those countries with higher numbers of institutions associated with lower ML/TF risks, such as the funds sector.

² The first EBA's report (EBA/REP/2020/35) on the functioning of AML/CFT colleges was published in December 2020 and is available here: <https://www.eba.europa.eu/eba-observes-improved-cooperation-between-authorities-through-newly-established-amlcft-colleges>

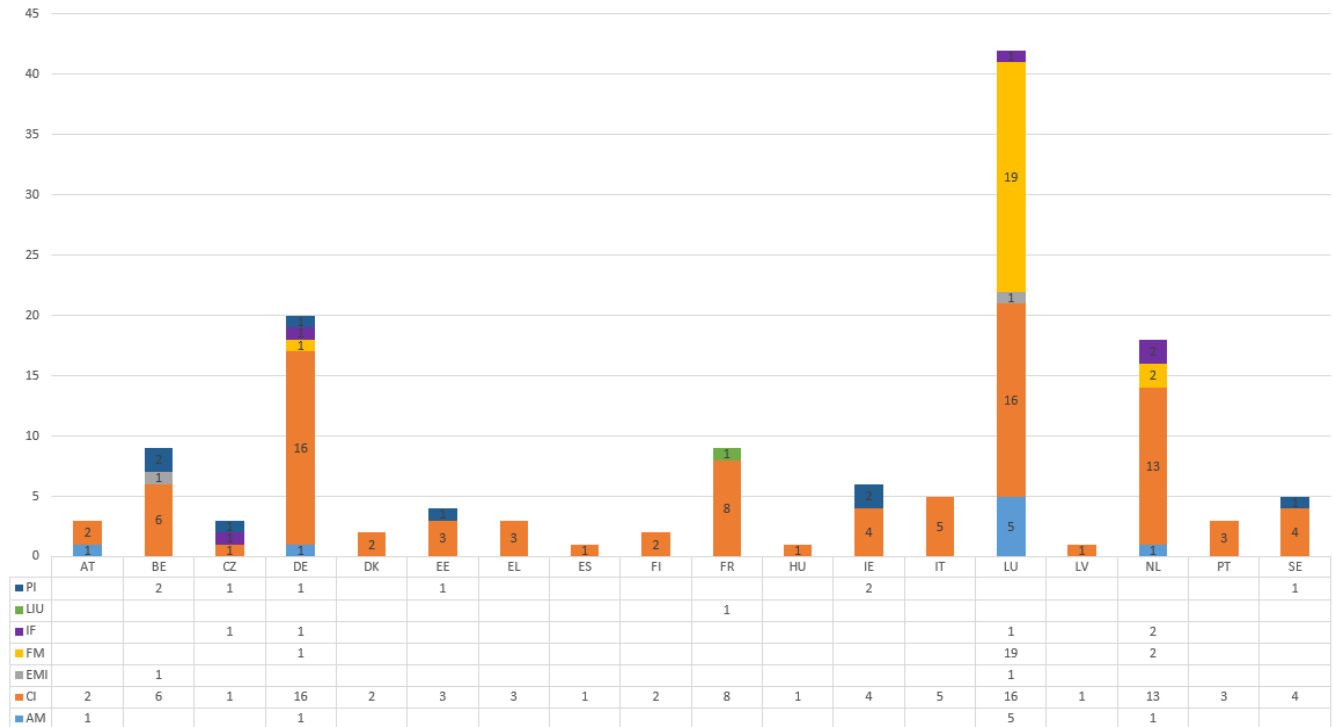


Figure 1: Total of AML/CFT colleges by sectors and Member States, where the first meeting was held in 2021.

2. EBA’s role in AML/CFT colleges

9. The EBA plays a dual role in the AML/CFT colleges framework. As per the Guidelines, EBA is a permanent member of all AML/CFT colleges and therefore is notified of the establishment of all colleges and keeps a log of those. It is also mandated by its founding regulation³ to lead, coordinate and monitor AML/CFT supervisory efforts in the EU and to foster the convergence of supervisory practices. Therefore, EBA is committed to support the effective functioning of AML/CFT colleges in line with the Guidelines. Through its support, the EBA fosters the consistent application of its AML/CFT standards and the convergence of supervisory practices across the EU. It also identifies ML/TF risks and trends in different sectors across the EU, which EBA uses to inform its work on various regulatory instruments and risk products, like the Opinion on ML/TF risks⁴.

10. In 2021, EBA staff actively monitored 21 newly established and 16 existing AML/CFT colleges across a wide range of financial institutions and Member States (refer to Figure 2 for more

³ 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

⁴ The Opinion on ML/TF risks is prepared by the EBA every two years in accordance with Article 6(5) of the Directive (EU) 2015/849

details). Due to Covid-19 restrictions on movement remaining in place in the EU, all meetings of colleges were virtual. When selecting colleges for active monitoring, EBA staff focused on those institutions that expose either the EU single market or a certain geographical area to heightened risk of ML/TF. EBA staff also endeavored to attend those AML/CFT colleges that were the first colleges established in the Member States, or the colleges from sectors in which a college had never been established before.

11. EBA’s staff participation entailed attendance at the college meetings, taking note of the discussions at those meetings and intervening where necessary, presenting to colleges on the key policy developments as well as identifying potential emerging risks raised in colleges and ensuring they are sufficiently addressed. For example, in one college where serious weaknesses in the financial institutions’ AML/CFT framework had been identified by one member but not communicated to other college members, EBA staff requested that the other members were immediately notified of this.

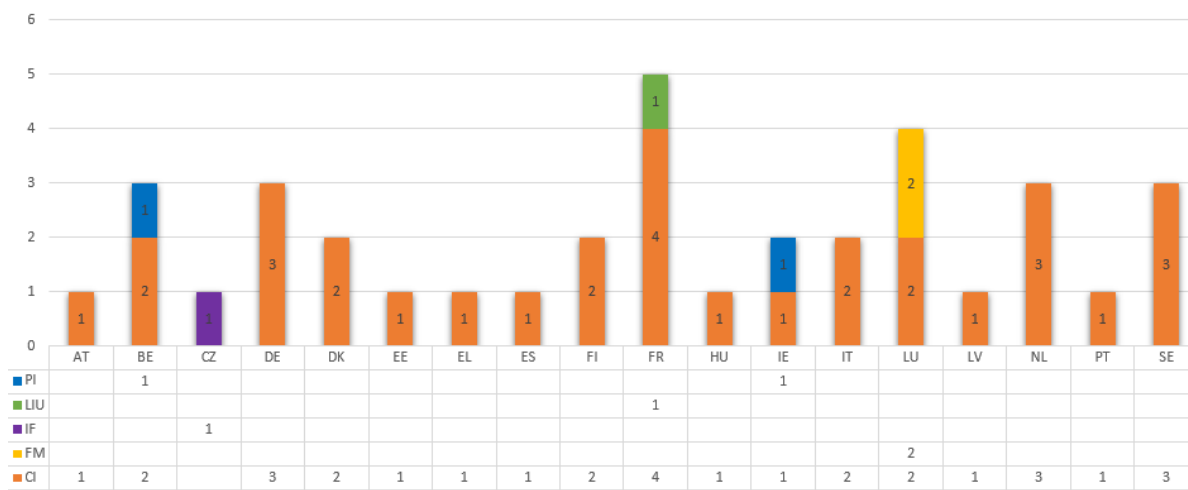


Figure 2: AML/CFT colleges closely monitored by EBA staff in 2021 by sectors and Member States

12. To ensure that the functioning of AML/CFT colleges is continuously improving, EBA staff provide their technical input and expertise to all colleges through the participation in actively monitored college meetings, bi-lateral feedback letters and meetings with lead supervisors, the annual report, workshops and training events, updates at the EBA’s AML Standing Committee and ad hoc exchanges with competent authorities. For example, the EBA organised a two-day workshop on AML/CFT colleges in May 2021, which was attended by 250 supervisors from different competent authorities. EBA also sent out feedback letters to 14 lead supervisors in respect of different AML/CFT colleges attended in 2021.

13. In 2021, the EBA most frequently provided technical assistance to AML/CFT colleges and lead supervisors in the following areas:

- a. mapping and identification of members and observers, including authorities from third countries, in particular for institutions involving complex structures;
- b. developing a framework terms of participation for specific observers, which can be used as a template in all AML/CFT colleges;
- c. identifying a lead supervisor in cases where the institution fulfills the conditions for an AML/CFT college but the first meeting has not taken place yet;
- d. providing contact details of members and observers within different competent authorities;
- e. interpreting certain aspects of the ESA's AML/CFT colleges guidelines;
- f. setting up AML/CFT colleges on the EBA's data sharing platform, which provides a secure way for sharing information within AML/CFT colleges;
- g. promoting the active participation of prudential supervisors in AML/CFT colleges by raising awareness of the impact that ML/TF risks could have on prudential aspects of financial institutions.

3. Observations from AML/CFT colleges

3.1 Organisational aspects of AML/CFT colleges

a. Establishment and functioning of AML/CFT colleges

14. In 2021, EBA staff observed significant improvements in the organisation and functioning particularly of those AML/CFT colleges established in 2020. Positive changes had been implemented by those supervisors who had already organised several colleges and had taken onboard previous feedback provided by the EBA, as well as those supervisors who had attended colleges organised by other supervisors. In those cases, EBA staff observed that the organisation of college meetings had commenced months ahead, which ensured that the required members and observers were available to attend and were sufficiently prepared for the meeting.

In two other colleges, EBA staff observed via public sources that significant developments relating to two financial institutions have occurred and suggested to the lead supervisor that an ad hoc college meeting might be necessary as no communication on these issues or an invitation to the meeting had been received from the lead supervisor.

15. EBA staff also saw a sharp rise in new AML/CFT colleges being established in 2021, in comparison to 2020. This meant that in some of the newly established colleges the issues relating to the operational aspects of AML/CFT colleges as detailed in the EBA's report 2020⁵ were still relevant. Some of the issues included:

- a. the lack of participation by some permanent members. Despite being invited by the lead supervisor, some members declined the invitation to participate in various colleges. Among the reasons for this were the limited scope of operations or the low levels of ML/TF risk associated with the cross-border financial institution in the host Member State. While the Guidelines do not envisage the college membership being optional, they ensure proportionality of the colleges' framework through the participation in college meetings, which can be adjusted on a risk sensitive basis. Therefore, in those instances where a member declines to participate because, for example, the institution in their Member State presents low ML/TF risk, such a member should be added to the contact list, as a minimum, to provide a gateway for cooperation, should it be necessary in the future. Moreover, it is important to remember that colleges provide a two-way exchange of information, which means that even if a member is not in a position to share any information with the college due to, for example, limited engagement with the financial institution in their jurisdiction, there might be some relevant information shared by other members, which may have an impact on the ML/TF risk exposure of the entire group or require an action from all members within a college.

Supervisors from one Member State had no legal basis for the participation in AML/CFT colleges due to the delayed transposition of the 5th AMLD.

- b. only limited time allocated to exchanges on some topics, which resulted in discussions being rushed, without effective reflections by the members. This had a negative impact on the quality and comprehensiveness of exchanges between members and observers during these meetings.
- c. no minutes or notes were taken or shared with members and observers by some lead supervisors following the college meeting. As a result, there was no record of discussions and actions agreed within the college, making it difficult to keep track and to follow up on the progress made with these actions.
- d. lack of application of a risk-based approach in the operation of AML/CFT colleges. The Guidelines do not provide a formula for calculating the frequency or deciding on the

⁵ EBA's report on the functioning of AML/CFT colleges (EBA/REP/2020/35); published on 15 December 2020; available here: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2020/961425/Report%20on%20the%20functioning%20of%20AML%20Colleges%20.pdf

form of the college meetings, leaving it up to the lead supervisor's and members' joint professional judgment. Most colleges (26 colleges out of 37 attended) agreed to meet annually, regardless of their ML/TF risk rating, with ad hoc meetings held if necessary. As a result, the annual meetings for some of the high-risk institutions, particularly in cases where material weaknesses in the AML/CFT controls framework had been identified by several supervisors, did not provide sufficient opportunities for members to adequately address these issues and to take a quick and coordinated action if needed. On the contrary, an annual meeting may not be necessary for lower risk financial institutions, and college members may decide to meet every two or three years.

One approach observed by EBA staff in several colleges, which seemed to work well, involved scheduling the meetings for very high-risk or high-risk institutions with material weaknesses twice a year at the outset, with the intention to reduce their frequency to one annual meeting at a later stage, if deemed necessary by members. For example, if members are confident that all material weaknesses are adequately remediated by the financial institution.

- e. Members in some AML/CFT colleges agreed to hold ad hoc meetings as necessary. EBA staff observed that the lead supervisors did not initiate ad hoc meetings in all cases where this would have been appropriate. For example, in cases where facts might have emerged during the year raising questions about the adequacy of an institution's AML/CFT systems and controls such as new ML/TF risks, material weaknesses in the financial institution's AML/CFT controls framework or significant delays with the financial institution's remediation plan. Furthermore, in many colleges, no updates were shared by the members throughout the year. In those cases, the college mechanism was only triggered by a request from the EBA or other colleges' members. This shows that AML/CFT colleges are not yet fully embedded in the overall AML/CFT supervisory framework.

In one college, members had agreed to meet once every three-years. An ad-hoc meeting was held four months after the first meeting to notify the members of a fine that was imposed by the lead supervisor and to allow the financial institution to explain how it proposes to remedy the shortcomings.

b. Effectiveness of discussions within AML/CFT colleges

16. In the majority of actively monitored AML/CFT colleges, a good level of engagement and interactions among the college members was observed by EBA staff. College members openly shared information, often on the lead supervisors' initiative. In particular, EBA staff observed the exchanges were more open and comprehensive in those colleges where several meetings

had already been held, and members had developed good working relationships between themselves.

In two different AML/CFT colleges, the same lead supervisor proactively commented and analysed the information provided through presentations and round table discussions during the meetings. This allowed the effective identification of common issues.

17. Often discussions were supplemented with comprehensive presentations by the lead supervisor and other members on their ML/TF risk assessment methodology and their approach to supervision of the financial institution. This contributed to achieving a greater convergence of AML/CFT supervisory practices. Representatives from the financial institution were also invited to present in most colleges attended by EBA staff, providing a different perspective to the discussions.

18. EBA staff observed, however, that members often appeared to be reluctant to ask questions or challenge the information presented by other members and, where this occurred, it was largely driven by the lead supervisor. The limited networking opportunities between members and observers in virtual meetings also had a negative impact on the quality of discussions during the meetings as often the discussions were slow to start and required some encouragement from the lead supervisor, particularly at the outset of the college.

In some colleges, a written input from the members was sought by the lead supervisor prior to the college meeting on the ML/TF risks, supervisory actions and any sanctions and supervisory measures imposed on the institution. In one college, the collected information was not shared within the college, therefore the added value of this approach was not apparent. In contrast, in other colleges, this information was displayed during the meeting to support the members' oral presentations.

19. EBA staff observed a variety of techniques applied by lead supervisors in some colleges to encourage the discussions and exchanges during the meeting. These included the lead supervisors doing the following:

- a. providing members with a list of topics or questions which members should be prepared to elaborate on during the college meeting;
- b. asking members to provide written updates on relevant topics. These updates were shared with the college members and observers for further discussions during the meeting. The written input was particularly useful for the lead supervisors when developing their understanding of the group-wide risk assessment.

- c. proposing more in-depth discussions on specific topics, types of ML/TF risks, workstreams or business lines between members and observers and with financial institutions. For example, if several supervisors identified shortcomings in the financial institution's transaction monitoring systems and controls in different Member States, it might be useful for supervisors to hear from the financial institution of the measures it has taken or plans to take to remediate these shortcomings.
- d. scheduling a separate meeting to exchange views between supervisors in preparation for and following a meeting with the financial institution.

In several AML/CFT colleges, the members were asked prior to the meeting to provide the following information:

- size (e.g. number of employees) and business activities (e.g. products, types of clients) of the branch you supervise;
- your authority's assessment of the ML/TF risk profile;
- whether your authority has seen any early warnings or red flags of emerging ML/TF risks;
- whether your authority has seen any materialized ML/TF risks and wider supervisory findings relating to the AML/CFT policies and procedures;
- whether your authority has planned or recently completed any AML/CFT supervisory actions;
- has your authority considered or imposed any sanctions or other corrective actions or measures for breaches of AML/CFT obligations;
- any other supervisory or enforcement measures;
- is there a need for a common approach and coordinated actions.

20. Some of the shortcomings identified by EBA staff, which impaired the discussions within colleges, included:

- a. important information was missing or provided only partially. Limited contributions from some members could be justified in situations where, according to the risk-based approach, the level of supervisory engagement with the financial institution is low. In other cases, it raised questions about the adequacy and effectiveness of the supervisory approach implemented by the supervisor. For example, some members' competent authorities had not yet assessed the level of ML/TF risks associated with the financial institution, and therefore, were unable to provide an update on this to the college. In those cases, the college members were unable to develop a comprehensive view of the institutions' exposure to ML/TF risks and the level of controls in place.
- b. no documents, reports or other materials were shared ahead of the meeting or, if shared, only few days before, not giving enough time for members to sufficiently review and consider them. EBA staff noted that if documents and reports had been shared well in advance, participants could have contributed more meaningfully to the discussions.

In one college, a supervisor attending the college meeting had only recently taken over the supervision of the financial institution in the host Member State and was not familiar with the institution's business or its risk profile. Therefore, this supervisor was unable to provide any meaningful updates to the college. As the institution had extensive operations in that jurisdiction, some emerging ML/TF risks that may impact the entire group might not have been brought to the attention of the college.

3.2 Cooperation through AML/CFT colleges

a. Cooperation between AML/CFT and prudential supervisors

21. Recent events involving some European banks have shown that an increased exposure to ML/TF risks can also have an impact on the financial institutions' ability to meet their prudential requirements. Therefore, to ensure that areas of common interest for AML/CFT and prudential supervision are identified early, the Guidelines envisage that prudential supervisors should be invited to participate in AML/CFT colleges as observers. This means that prudential supervisors are allowed to attend the meetings and actively contribute to the discussions. In comparison with the EBA's 2020 Report, EBA staff observed an increased attendance by prudential supervisors in AML/CFT colleges, including by the European Central Bank.

In several AML/CFT colleges, prudential supervisors shared their insights about the strategic and planned organisational changes within the financial institution, which may have a direct impact on its exposure to ML/TF risks, prompting the AML/CFT supervisors to closely monitor these developments.

22. To highlight the importance of exchanges between prudential and AML/CFT supervisors, some college meetings were held jointly between the AML/CFT college and the college of prudential supervisors (where such colleges exist). Should, however, a joint meeting not been possible, the lead supervisors ensured that at least the consolidating supervisor of the prudential college participated in the AML/CFT college. Examples of contributions from prudential supervisors included:

- a. findings from their assessment of the financial institution's internal control systems, including delays with the implementation of wider IT projects;
- b. concerns about the governance arrangements in place, including governance related to the remediation projects in place;
- c. their assessment of the level of compliance culture within the institutions;
- d. their overall assessment of risks and relevant section from the SREP assessment;

- e. their observations on the suitability of staff within the compliance function or within the management body of the financial institution.

In some AML/CFT college meetings, prudential supervisors, including the European Central Bank, shared relevant sections from their SREP assessment. They focused, in particular, on the strategic changes in the bank's business plan, which showed that the bank's business was geared towards private equity and real estate. This could potentially increase the bank's exposure to ML/TF risks.

23. In some instances, EBA staff observed that prudential supervisors' ability to actively contribute to the discussions within AML/CFT colleges was impaired by missing terms of participation. In these cases, the contributions from prudential supervisors were often limited only to providing a broad overview of the institution, without being able to share, for example, their findings from inspections or the SREP assessment. Although helpful, these exchanges did not reach their full potential, emphasising that the terms of participation should be finalised without delay. To facilitate this process, EBA staff helped with the development of model terms of participation for some of the observers, which can be adopted in all relevant AML/CFT colleges.

In three colleges, joint meetings are held between AML/CFT and prudential colleges of supervisors, giving an opportunity to prudential supervisors to share their perspective of some of the issues discussed within the college.

b. Cooperation with supervisors from third countries

24. In most AML/CFT colleges established in 2021, the first meeting of the college was used to discuss between members potential observers from third countries, with a view to inviting them to the next meeting of the college. EBA staff, however, observed that very little progress with inviting them had been made in most colleges, including those established in 2020, as these observers attended only in a small number of colleges. By omitting or delaying the invitation of these observers, lead supervisors risk impairing their and other members' understanding of ML/TF risks in those third countries.

25. When inviting supervisors from third countries to AML/CFT colleges, EBA staff observed two main challenges that most lead supervisors were experiencing:

- a. when proposing to invite certain authorities from third countries, the lead supervisors did not always explain the rationale to other members why they had decided to invite these instead of other authorities. In accordance with the Guidelines, the lead supervisor should invite those authorities that would benefit the AML/CFT college. As a matter of good practice and to foster collegiality in colleges, the lead supervisors may wish to communicate their justification also to the other members in the college.

- b. the assessments of confidentiality and professional secrecy rules applicable to proposed observers from third countries, in the absence of a common framework or coordination mechanisms, were deemed to be challenging and time-consuming by competent authorities. Although, the members in AML/CFT colleges can make use of the EBA's equivalence assessments of confidentiality rules applicable to authorities in third countries under the Capital Requirements Directive⁶ or, in some instances the AMLD⁷, as a basis for their assessment, competent authorities are not equipped to carry out these assessments. To that end, it is important to note that a missing or negative assessment by the EBA does not prevent the invitation of a supervisor from third countries to participate in the college as the ultimate decision of whether the authority can be invited rests with the lead supervisor and other permanent members.

In one AML/CFT college, relevant supervisors from a third county were not invited to the college meeting, although there had been a significant fine imposed on the financial institution in that jurisdiction. In this case, it was evident that the AML/CFT college would have benefited from their explanation of the weaknesses identified in the financial institution to assess the potential impact that these weaknesses may have on other entities within the group.

c. Coordination of supervisory approaches and joint actions

26. To ensure the effective and consistent oversight of cross-border financial institutions, the Guidelines require that permanent members discuss during the AML/CFT college meeting, among other items, whether a common approach or a coordinated action would be appropriate or necessary. EBA staff observed that this topic was discussed only on very few occasions. This was not unexpected. Considering that many meetings attended by EBA staff were the first time the college met, such discussions would have been premature. In most colleges, members agreed to postpone these discussions until a later time when, for example, supervisory inspections would be finalised or the remediation plans completed. In colleges where this topic was discussed, it was triggered by:

- a. similar shortcomings or weaknesses identified by different supervisors within the cross-border institution;
- b. disjointed and mis-aligned measures taken by the cross-border financial institution to remedy similar shortcomings in different branches;

⁶ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

⁷ Guidelines on the equivalence of confidentiality and professional secrecy regimes of third-country authorities (EBA/GL/2022/04), available here: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2022/Guidelines%20on%20the%20equivalence%20of%20confidentiality%20regimes/1032151/Guidelines%20on%20equivalence%20of%20confidentiality%20regimes.pdf

- c. measures taken at a group level that have an impact on all entities within the group, like a centralised transaction monitoring system, was deemed ineffective;
- d. serious shortcoming identified in the implementation of group-wide policies and procedures within branches and subsidiaries.

In a number of AML/CFT colleges led by one lead supervisor, members agreed to gather relevant information from their supervised entities on topics agreed by members within the college and compare the results during the college meeting. The topics discussed so far included the risk assessment and CDD applied by the financial institution and the transaction monitoring systems and controls, including STR and sanctions screening, implemented by the institution. Representatives of the financial institution at a group level were also asked to report on these topics in their presentation to the college.

27. As the AML/CFT colleges mature, it will be important for the lead supervisors and other members to identify the key recurring issues, which are of common interest to a number of members and may merit a common approach or a coordinated action between them. This may require an analysis of most common trends and ML/TF risks that are highlighted by supervisors during exchanges in colleges. For example, in most colleges attended by EBA staff, weaknesses in the transaction monitoring controls in financial institutions were discussed by supervisors. However, this did not trigger a more in-depth discussion on this topic.

In one AML/CFT college, members agreed to consider the question of the intragroup exchange of information in respect of common customers of several entities within the group.

3.3 ML/TF risks and trends identified in AML/CFT colleges

28. As part of the EBA's wider role to lead, coordinate and monitor the AML/CFT efforts in the EU, EBA staff used closely monitored AML/CFT colleges to gather information on different ML/TF risks and trends within the EU. EBA staff observed that discussions on ML/TF risks took place in all colleges, although in some, they were insufficiently comprehensive.

29. EBA staff observed that the discussions on ML/TF risk factors by members and observers were broadly in line with the EBA's Risk Factors Guidelines⁸. The risk factors most commonly addressed included:

- a. the size and complexity of the financial institutions' business;

⁸ The EBA Guidelines (EBA/GL/2021/02) 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.

- b. the effectiveness of internal controls put in place by financial institutions;
- c. type of products and services provided by financial institution in their jurisdiction;
- d. geographical exposure of the financial institution, including operations in third countries and high-risk jurisdictions;
- e. financial institutions' exposure to PEP customers.

30. In all actively monitored AML/CFT colleges, members shared their assessment of ML/TF risks associated with the cross-border institution operating in their Member State. They mostly focused on residual risks, rather than the inherent risks within the sector. EBA staff observed that the risk assessment methodologies and risk categories varied across competent authorities, at times significantly, which meant that meaningful comparisons of different risk scores allocated to the financial institution were not always possible. The absence of a common ML/TF risk assessment methodology also appears to have a negative effect on the lead supervisors' ability to develop a good understanding of the institution's exposure to the ML/TF risks at a group level or to develop a group-level ML/TF risk assessment.

31. From the risk discussions within the colleges, EBA staff identified certain trends that broadly echoed the areas of increased ML/TF risks identified in the EBA's various opinions on ML/TF risks in the EU's financial sector⁹, including:

- a. the shortcomings in the CDD, including weak controls relating to the identification of origin of funds, keeping CDD up to date, the use of innovative solutions and remote onboarding of customers.
- b. the ineffectiveness transaction monitoring systems and controls, including the monitoring of cash transactions, transactions in virtual assets, instant monitoring of payments, adequacy of scenarios and the delays when investigating alerts;
- c. an expansion of a financial institution's operations in third countries, which may have rules limiting the exchange of information within the group;
- d. the inadequacy of risk assessments and the risk classification of customers, including PEP screening, customer risk profiling in private banking and in corporate and investment banking;
- e. weak AML/CFT governance arrangements put in place by the financial institution, including limited reporting to the Board, weak oversight of a branch network by the head office entity;

⁹ This opinion is developed by the EBA every 2 years in accordance with Article 6(5) of Directive (EU) 2015/849.

- f. an inadequately staffed AML/CFT compliance function that could adequately support the business due to its size and complexity or a fast-growing pace;
- g. an inadequate or outdated IT infrastructure in some financial institutions, which, in some instances, does not allow remote customer onboarding;
- h. the restructuring of branch networks by some financial institutions and the impact that this may have on an overall level of AML/CFT compliance within the group;
- i. the inconsistent application of the AML/CFT group-wide policy related to the risk classification of high-risk customers and the application of EDD measures and the failure by some financial institutions to adjust their group-wide policies and procedures to comply with national requirements applicable to their branches;
- j. the ineffective management of correspondent banking relationships by some banks;
- k. the failure by some financial institutions to exercise an adequate oversight of the outsourced AML/CFT activities, particularly over the shared service centers located in different jurisdictions, including outside the EU.

32. EBA staff observed that in the majority of actively monitored AML/CFT colleges no assessment was carried out by the lead supervisors or members to identify any trends in risks or shortcomings that may suggest the need for a common approach or joint actions. Competent authorities are expected to consider the trends set out in this report when developing their own risk priorities and when deciding on specific topics that may merit a more comprehensive discussions at the college meetings.

4. EBA's approach to monitoring AML/CFT colleges 2022-2024

33. From January 2022, the EBA changed its approach¹⁰ to monitoring AML/CFT colleges. The EBA will complement its focus on AML/CFT colleges in the highest risk sectors and the largest cross-border institutions and will also consider, among other things, the strategic importance of these institutions in their Member States. After applying its six selection criteria as described in Figure 3 below, the EBA has selected 15 AML/CFT colleges for active monitoring in 2022-2024. As part

¹⁰ The EBA explained its approach in the factsheet 'The EBA's approach to monitoring the functioning of AML/CFT colleges' published in December 2021, available at:

https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Communication%20materials/Factsheets/1025033/Factsheet%20on%20AML/CFT%20Methodology%20.pdf

of this monitoring, EBA will attend all meetings of these colleges and will provide technical supports where necessary.

34. When attending the college meetings, EBA staff will, where appropriate, share with the college relevant information from the EuReCA database¹¹ on material weaknesses received from various competent authorities in respect of the cross-border financial institution and the measures they have taken to address those weaknesses. Competent authorities are required to report to the EuReCA in accordance with the draft regulatory technical standards¹².

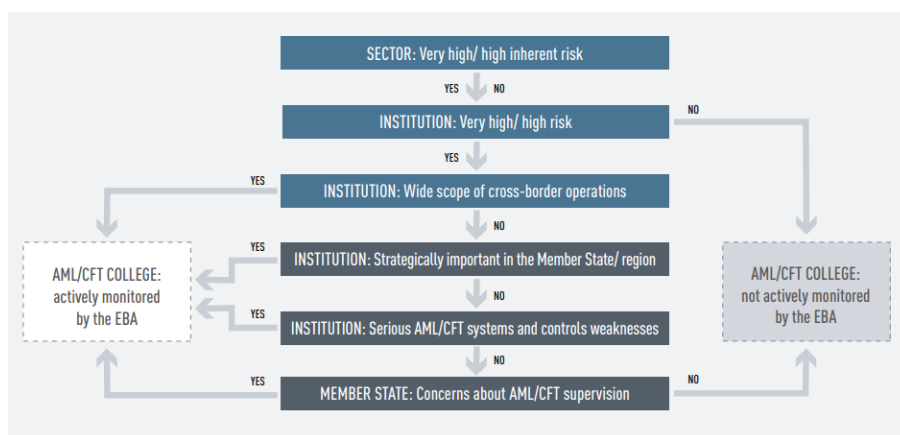


Figure 3: The EBA's decision tree when selecting AML/CFT colleges for active monitoring.

35. In addition, EBA staff will select another 10 AML/CFT colleges annually, from those that are not actively monitored, for thematic monitoring. This is necessary to identify specific ML/TF risks in certain sectors and to monitor the effective functioning of colleges in those sectors that are under-represented in actively monitored colleges. In 2022, the EBA has identified the funds sector for thematic monitoring. EBA staff will gather information from the selected 10 colleges through a questionnaire and will hold meetings with lead supervisors, where necessary. The EBA will continue keeping a log of all colleges' activities for the purposes of its general monitoring activities.

36. The outcomes from the EBA's monitoring will be published in an annual report and will also inform the EBA's other work, like the Opinion on ML/TF risks published in accordance with Article 6(5) of the AMLD, and supervisory priorities for the year (refer to the Proposed action 6 below).

¹¹ The European reporting system for material CFT/AML weaknesses (EuReCA) was established by the EBA in accordance with Article 9a of Regulation (EU) 1093/2010 where AML/CFT and prudential competent authorities are required to report on material weaknesses they have identified in financial institutions and measures they have taken to address those weaknesses. The database was launched in January 2022.

¹² The EBA's draft regulatory technical standards (EBA/RTS/2021/16) under Article 9a (1) and (3) of Regulation (EU) No 1093/2010 setting up an AML/CFT central database and specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained therein, published on 20 December 2021.

5. Good practices observed in AML/CFT colleges

37. The key objective of AML/CFT colleges is to provide supervisors involved in the supervision of cross-border financial institutions with comprehensive and up to date information about the financial institutions' exposure to the ML/TF risks so that they can take the necessary actions to address these risks in a timely manner before they crystallise.

38. To further improve the functioning of AML/CFT colleges going forward, EBA staff propose that the lead supervisors and other college members consider taking the following six actions, which are based on the best practices observed in AML/CFT colleges so far:

- a. Finalising the structural elements of AML/CFT colleges, including the Cooperation Agreement and Terms of Participation of observers to ensure that there are no obstacles preventing or limiting the members' or observers' participation in colleges.
- b. Enhancing discussions during the AML/CFT college meetings to ensure that the information exchanged is comprehensive and meaningful.
- c. Fostering an ongoing exchange of information between members and observers within the colleges, which is not limited only to college meetings, to ensure that the relevant information is communicated without delay in a most efficient way either through scheduled or ad hoc meeting or bi-laterally via other channels.
- d. Applying a risk-based approach to determining the frequency and nature of college meetings, to ensure that more frequent meetings take place in respect of those financial institutions exposed to higher ML/TF risks, and that sufficient opportunities exist for informal exchanges, which are essential to fostering good cooperation among all the members of the college.
- e. Taking steps to identify areas where a common approach or a joint action may be necessary to ensure that the re-occurring issues in different jurisdictions, which may require an action at a group level, are adequately addressed.
- f. Enhancing supervisory convergence in AML/CFT colleges by encouraging exchanges of supervisory experiences and approaches when dealing with certain ML/TF risks or concerns.

39. As part of its monitoring activities in 2022 as explained in Section 4 above, EBA staff will closely monitor the progress made by supervisors in implementing the six action points listed above and will provide an update on this in the next AML/CFT colleges report.

Action point 1: Finalising the structural elements of AML/CFT colleges

40. It has been evident from the college meetings attended in 2021 that the absence of structural elements, such as missing or incomplete documentation formalising the arrangements in colleges or an incomplete set of attendees, may have a negative impact on the level of cooperation within the college. Thus, for the AML/CFT colleges to be able to achieve their maturity, it is crucial that the following points are addressed by lead supervisors:

- a. ensuring the establishment of all AML/CFT colleges for institutions that meet the criteria set out in the Guidelines. The college is considered established when a lead supervisor has identified all members and relevant observers and has notified them that the AML/CFT college is being set up in respect of the cross-border financial institution, indicating a potential date when the first college meeting is planned to take place.
- b. finalising the Cooperation Agreement and the Terms of Participation of observers, where not yet done so, to facilitate the comprehensive exchange of information and to ensure that the relevant observers abide by the rules of the AML/CFT college as determined by the Guidelines and the Cooperation Agreement;
- c. ensuring the participation of all members in the AML/CFT colleges;
- d. taking the necessary steps to ensure that all relevant observers are identified and invited to the AML/CFT college in line with Guidelines including prudential supervisors, the FIUs and equivalent authorities in third countries.

Action point 2: Enhancing the discussions during the AML/CFT college meetings

41. To facilitate the exchanges during the meetings and to encourage more active and open discussions between members and observers, the lead supervisors chairing the meetings, may wish to consider the following good practices that EBA staff have observed:

- a. to proactively ask follow-up questions, where necessary, and to encourage other members to contribute to the discussions. While the discussions in the college meetings are generally led by the lead supervisors, other members are also encouraged to be involved, for example, by seeking clarifications in cases where the presented information is not clear or where additional information may be necessary to develop a better understanding of the issues discussed.

- b. in virtual meetings, it may be necessary to provide sufficient breaks between sessions to allow members and observers to attend to other urgent work commitments, so that there are no distractions during the meeting, allowing them to focus their attention on the issues discussed;
- c. to ensure that sufficient time is allocated for the exchange of views between members and observers, particularly where they do not provide a formal presentation;
- d. if some members or observers or their alternates are unable to attend the meeting, to avoid the information gap, they should at least provide a written update on the relevant topics to the lead supervisor to be shared within the college;
- e. where the supervisor attending the college is unable to respond to a question raised during the meeting, it is important that the response is provided and shared within the college soon thereafter.

42. The effectiveness of AML/CFT colleges and their added value to the AML/CFT supervision of cross-border institutions is largely dependent on the comprehensiveness of members' and observers' contributions at the college meetings. To enhance the quality of discussions and to ensure that the information exchanges are meaningful and comprehensive, lead supervisors may wish to consider incorporating some of the following good practices in their AML/CFT colleges:

- a. to set out prior to the meeting the topics on which members and observers should be prepared to provide an update or to discuss during the meeting. As a minimum, the information described in the Guidelines should be exchanged in all scheduled meetings of each college. However, additional discussion points may be identified based on, for example, previous exchanges in the college or recent developments associated with the financial institution. Some examples of additional topics include:
 - i. the supervisors' assessment of the financial institution's progress made with the remediation plan put in place to remedy shortcomings in its systems and controls framework;
 - ii. a follow up on outstanding issues or information, if any, from the previous meetings of the college;
 - iii. an update from prudential supervisors on, for example, findings from their supervisory activities or the relevant outcomes of the SREP assessment, particularly where they relate to the governance arrangements, compliance culture within the financial institution and an internal controls framework, including IT systems, as well as the institution's risk management framework;

- iv. an update from the FIUs on the quality and quantity of STRs submitted by the institution, in those cases where the FIU participates in the college;
 - v. targeted discussions on specific risks or controls within the institution or within a specific business line;
 - vi. an update from the EBA on submissions of material weaknesses received in the EuReCA database in respect of the cross-board financial institution;
 - vii. an update from the AML/CFT and prudential supervisors on their submissions to the EuReCA database.
- b. to ensure that observers are also actively involved and contributing to the discussions within the college. Where, for example, prudential supervisors attend the meeting as observers, the lead supervisor should ensure that there is a two-way exchange of information between the members and these observers. This can be achieved by ensuring that sufficient time is allocated in the agenda for discussions or presentations on, for example, findings from prudential supervisory activities or the SREP assessment or any other relevant information that may have an impact on AML/CFT supervision of the financial institution.
- c. to request for the information to be presented in a structured way, including through the use of visuals, presentations, excel spreadsheets, tables and other supporting documentation and to ensure that this information is available to all relevant members and observers.
- d. where the financial institution is invited to attend a college meeting, it may be useful to narrow the scope of its presentation or contributions to focus on specific ML/TF risks or measures it applies to mitigate these risks. The focus areas could be determined by the lead supervisor together with other members, based on their previous discussions within the college.

Action point 3: Fostering the ongoing cooperation between members and observers within AML/CFT colleges

43. AML/CFT colleges are permanent structures that provide an opportunity for supervisors involved in the supervision of cross-border institutions to engage with each other during the college meeting but also on an ongoing basis. Supervisors should make use of the colleges framework to cooperate and exchange information in a timely manner, particularly in cases where significant developments related to the financial institution have emerged that may have an impact on the entire group or some institutions within the group.

Action point 4: Applying the risk-based approach to AML/CFT college meetings

44. The risk-based approach is embedded in the AML/CFT colleges framework by giving flexibility to set the frequency of the college meetings that is commensurate to their exposure to the ML/TF risk. This means that supervisors involved in the supervision of higher risk institutions should meet more frequently than those supervising lower risk institutions. Similarly, lower risk colleges may not require a college meeting to be held annually and less frequent or ad hoc meetings may be sufficient.
45. Should the risk rating of the financial institution change, members should ensure that the frequency of college meetings that had been agreed at the outset of the college continues to satisfy the cooperation needs within the college and amend the frequency if necessary. For example, if the business model of the financial institution has changed or material weaknesses were identified in its systems and controls framework, which has resulted in these institutions being exposed to higher ML/TF risks, it may be prudent to increase the frequency of the college meetings at least for as long as the risks are sufficiently addressed and mitigated by the financial institution. Thereafter, the frequency can revert to that originally agreed.
46. Similar considerations should apply to determining the form of the college meetings. In 2021, all meetings were virtual meetings due to the restrictions on movement applicable in the EU. Going forward, virtual meetings are likely to remain an important feature of many colleges but lead supervisors should consider holding face-to-face meetings in respect of some high-risk institutions to build trust and facilitate exchanges going forward. Equally, it may be necessary to consider whether a meeting can be replaced with written exchanges for some low-risk institutions.

Action point 5: Taking steps to identify areas for common approach or joint actions

47. AML/CFT colleges provide supervisors with an opportunity to address issues and risks in a more consistent and coordinated manner. Competent authorities should refer to the Section 3.3 in this report to inform them of potential risk areas that may warrant common approach or joint actions. Keeping comprehensive records of key points discussed within the college meetings may also help the lead supervisors and other members with the identification of issues and risks specific in their colleges.
48. Where a common approach or a joint action is agreed, it is important that it is commensurate with the level of ML/TF risk associated with the group and individual parts of this group that operate in different Member States. This means that the scale and intensity of joint actions in respect of the same institution could vary in different Member States in line with the risk-based approach. The lead supervisors should ensure that any action points agreed by the members are accurately reflected in the minutes and are followed up and completed by the relevant members and, subject to terms of participation, by observers.

Action point 6: To enhance supervisory convergence in AML/CFT colleges

49. AML/CFT colleges allow supervisors to address issues and risks associated with cross-border institutions in a more consistent and coordinated manner. They also provide an opportunity to share supervisory experiences when dealing with certain matters, which may inform and enhance the supervisory approach and practices by other members and observers in the college.

50. From their observations in AML/CFT colleges and other work carried out by the EBA, like the AML/CFT implementation reviews and the Opinion on ML/TF risks, EBA staff have identified certain areas, which may merit the exchange of views between supervisors. The lead supervisors, therefore, should consider including in the agendas of future college meetings the following topics:

- a. the cooperation for the purposes of the risk assessment and supervision, including with tax authorities, the FIU, prudential supervisors;
- b. the methods applied by supervisors to monitor and assess the effectiveness of transaction monitoring policies and procedures put in place by institutions;
- c. the approaches applied by supervisors when assessing the AML/CFT governance arrangements put in place by financial institutions, including their oversight of the outsourced AML/CFT systems and controls;
- d. the approaches for assessing the effectiveness of measures taken by financial institutions to remedy breaches and weaknesses identified by supervisors;
- e. the approaches for identifying and addressing relevant risk factors for their sectoral and entity-level risk assessments, including the identification of risks arising from laundering the proceeds of tax crimes.

6. Conclusions

51. In 2021, the EBA saw a steep rise in a number of AML/CFT colleges being set up. This was expected, as lead supervisors had until the end of January 2022 to set up AML/CFT colleges.

52. EBA staff recognise the competent authorities' commitment to the effective functioning of AML/CFT colleges. This was evident from resources allocated to AML/CFT colleges with dedicated teams being established in some competent authorities, which are responsible for the establishment and functioning of colleges, and with senior members of staff at some competent authorities chairing the meetings. The active participation by members and the comprehensive and open exchanges between them during the college meetings are all signs

that colleges provide a rich source of information. Members and observers are also reminded that this source of information is not limited only to the college meetings but should also be used, when necessary, throughout the supervisory lifecycle. For the colleges to fully succeed, the supervisors should focus now on determining how they use this information effectively in their own practices when supervising financial institutions on a risk sensitive basis.

53. Many colleges attended by EBA staff were new and held their first meeting only in 2021. This meant that operational issues were often prevalent, like finalising the cooperation agreement and terms of participation, to ensure that there are no obstacles limiting the participation of some members or observers. It also meant that in some colleges, the level of trust necessary to facilitate open exchanges between members and observers was not yet fully achieved. However, the EBA expects that these issues will be resolved in the coming years as colleges develop further and mature.

54. As the AML/CFT colleges will be enshrined in the level 1 legislative text in future, as proposed by the European Commission in the proposed AML/CFT legislative package published in July 2021¹³, it is a clear signal to competent authorities that AML/CFT colleges are an important tool of cooperation. This means that the lead supervisors' and members' focus should now be on enhancing the functioning of the existing colleges to ensure that, by the time the new legislation is implemented, they are fully functional and meeting their objectives.

55. In this report, the EBA has proposed six action points for the lead supervisors and members to consider incorporating in their AML/CFT colleges. The aim of these action points is to help supervisors with enhancing the effectiveness of AML/CFT colleges by focusing their attention on those areas where improvements may be necessary. In particular, it will be important to ensure that adequate steps have been taken to ensure that all relevant members and observers can participate in the college meetings and that they are given clear instructions on the type of information that they are expected to share with the college and how they should do it. As part of its monitoring activities as explained in section 4 of this report, the EBA will take a note how these action points have been implemented.

¹³ https://ec.europa.eu/info/publications/210720-anti-money-laundering-counter-terror-finance_en



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