

EBA/OP/2020/14

10.09.2020

Opinion of the European Banking Authority on the future AML/CFT framework in the EU

Response to the European Commission's 'call for advice on defining the scope of application and the enacting terms of a regulation to be adopted in the field of preventing anti-money laundering and terrorist financing'

Introduction and legal basis

1. On 3 March 2020, the European Commission issued a call for advice to the European Banking Authority (EBA) on 'defining the scope of application and the enacting terms of a Regulation to be adopted in the field of preventing anti-money laundering and terrorist financing'.
2. Specifically, the Commission asked the EBA to:
 - a. identify which aspects of Directive (EU) 2015/849 (the Anti-Money Laundering Directive (AMLD)) should be harmonised;
 - b. identify whether some aspects of the AMLD should be strengthened and, if so, how they should be strengthened;
 - c. identify whether there are any financial institutions, or activities, products or services, that should be subject to anti-money laundering/counter financing of terrorism (AML/CFT) obligations but are not currently within the scope of the European Union (EU)'s AML/CFT framework; and
 - d. assess the interaction of a future AML/CFT Regulation with the amended AMLD.



3. The Commission also asked the EBA to assess whether other EU legal instruments should be adjusted to ensure greater synergies between these legal instruments and the AML/CFT framework.
4. The EBA competence to deliver an opinion is based on Article 16a(4) of Regulation (EU) No 1093/2010,¹ as AML/CFT relates to the EBA's area of competence.
5. In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors,² the Board of Supervisors has adopted this opinion, which is addressed to the European Commission.

General proposals

6. In its advice, the EBA sets out how the EU's legal framework should be amended to tackle vulnerabilities linked to divergent national approaches and gaps in the EU's AML/CFT defences. It recommends that the Commission establish a single rulebook where a robust set of common rules supports the implementation of a proportionate and effective risk-based EU AML/CFT regime.
7. Specifically, the EBA recommends that the Commission:
 - a. Harmonise aspects of the EU's legal framework where evidence suggests that the divergence of national rules and practices has had a significant adverse impact on the prevention of the use of the EU's financial system for money laundering/terrorist financing (ML/TF) purposes. This is the case in particular in respect of customer due diligence measures and AML/CFT systems and controls requirements that determine what financial institutions do to tackle ML/TF. It is also the case in relation to rules governing key supervisory processes such as risk assessments, cooperation and enforcement. In the EBA's view, these common rules should be set out in directly applicable Union law.
 - b. Strengthen aspects of the EU's legal framework where current provisions are insufficiently robust and create vulnerabilities in the EU's AML/CFT defences. This is the case particularly in relation to the powers AML/CFT supervisors have at their disposal to monitor and take the measures necessary to ensure financial institutions' compliance with their AML/CFT obligations, and in relation to financial institutions' reporting requirements, which should include a requirement to identify and report suspicious activity as well as suspicious transactions. The EBA considers that these provisions could remain in a directive.

¹ 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 Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).



- c. Review the scope of the EU's AML/CFT legislation to ensure that the list of obliged entities is sufficiently comprehensive and well-defined, and in line with international AML/CFT standards. Examples of sectors that are not currently included or whose status under the current AML/CFT directive is unclear include virtual asset service providers, investment firms and investment funds.
- d. Clarify provisions in sectoral financial services legislation to ensure that they are compatible with the EU's AML/CFT objectives. This includes making sure that ML/TF risk is addressed consistently across all sectors and throughout the supervisory process. Examples include prudential rules governing market entry, passporting and ongoing supervision, and provisions in Union law relating to, *inter alia*, data protection, payment services, financial sanctions and deposit guarantee schemes.

8. The detail of the EBA's advice is set out in a report in the Annex to this Opinion.

This opinion will be published on the EBA's website.

Done at Paris, DD Month YYYY

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors