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EBA-Op-2019-08

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24 July 2019

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# Opinion of the European Banking Authority on communications to supervised entities regarding money laundering and terrorist financing risks in prudential supervision

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## Legal basis

1. The competence of the European Banking Authority (EBA) to deliver this Opinion is based on Article 29(1)(a) of Regulation (EU) No 1093/2010<sup>1</sup>, as part of the EBA's objective of playing 'an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union'.
2. This Opinion addresses prudential supervisors that are competent authorities referred to in Article 4(2)(i) of Regulation (EU) No 1093/2010. It highlights the importance of money laundering and terrorist financing (ML/TF) risks in the prudential context.
3. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors<sup>2</sup>, the Board of Supervisors has adopted this Opinion.

## Background

4. EU legislators have taken a number of steps to clarify and strengthen the important link between anti-money laundering/countering the financing of terrorism (AML/CFT) and prudential issues and to complement the Union's existing legal framework<sup>3</sup>. These steps

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<sup>1</sup> 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).

<sup>2</sup> Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

<sup>3</sup> Article 117(6) of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

include amendments to the Capital Requirements Directive (CRD )<sup>4</sup>, which further clarify the link between prudential supervision and AML/CFT supervision and require prudential supervisors to act on AML/CFT information. Relevant provisions include:

- i. Article 91 of the CRD V that requires prudential supervisors to verify whether the members of the management body of an institution (including of a financial and mixed financial holding company under the conditions of Article 3(3) of CRD V) continue to be of ‘sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties ... where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution’.
  - ii. Article 97 of CRD V that introduces an explicit requirement for prudential supervisors to notify, without delay, both the competent authority responsible for the AML/CFT supervision of an institution and the EBA where a review of that institution’s governance arrangements, business model or activities gives rise to ML/TF concerns.
  - iii. Article 117 of CRD V that requires prudential supervisors, AML supervisors and Financial Intelligence Units to cooperate within their respective competences and to provide each other with information relevant for their respective tasks.
5. In December 2018, the Council of the European Union adopted an Anti-Money Laundering Action Plan<sup>5</sup>. This Action Plan sets out a number of objectives, with deliverables and timelines, and highlights the need to improve the effectiveness of AML/CFT supervision. While supervision of financial institutions’ compliance with AML/CFT requirements remains an exclusive competence of the national AML/CFT authorities, the Action Plan notes that better exchange of information and collaboration between those authorities and prudential supervisors, especially cross-border, is vital to achieving effective supervision.
  6. The Council Action Plan asks supervisors to ‘send a clear signal to the industry that money laundering / terrorist financing risks communicated to Prudential Supervisors by AML/CFT supervisors are also factored into the prudential supervisory process and that Prudential Supervisors cooperate closely with AML/CFT supervisors for this purpose, while respecting the specific tasks of both supervisors.’
  7. To support a coordinated approach among prudential supervisors, the EBA is issuing this Opinion to prudential supervisors with the aim of sending a common message to the relevant supervised entities on the importance of ML/TF risks for prudential supervision across the single market.

<sup>4</sup> Directive (EU) 2019/878

<sup>5</sup> <https://www.consilium.europa.eu/en/press/press-releases/2018/12/04/money-laundering-council-adopts-conclusions-on-an-action-plan-for-enhanced-monitoring/>

## ML/TF risks and prudential supervision

8. With this Opinion, the EBA invites prudential supervisors to communicate to institutions' management bodies and senior management the expectation that the prudential supervisors are aware of, and act upon, ML/TF risks that may have an impact on an institution's safety and soundness. Prudential supervisors are also invited to alert institutions to the fact that concerns about ML/TF, in particular concerns stemming from AML/CFT authorities' assessments of ML/TF risks associated with individual institutions, will also be considered in the prudential supervisory process and in particular, but not solely, as follows:
  - i. at authorisation, the extent to which the applicant's business model, the proposed risk management systems and controls, and the suitability of its shareholders or members (whether direct or indirect) and of its management body, senior management and key function holders give rise to ML/TF risks;
  - ii. as part of ongoing supervision, in the assessment of acquisitions of qualifying holdings and in the fit and proper assessment of the management body;
  - iii. in the context of the supervisory review and evaluation process (SREP), as part of the review of risks, business models, credit operations, governance and internal risk management; and
  - iv. in the context of taking any administrative measures, imposing penalties or proceeding to a withdrawal of authorisation process, thus ensuring that AML/CFT-related weaknesses with a prudential impact are taken into account in applying prudential supervisory measures and powers to alleviate prudential concerns.
9. Prudential supervisors are invited to note in their communications the ongoing need for closer cooperation and increased information exchange between prudential supervisors and AML/CFT competent authorities at home and abroad. This is because, as set out above, prudential supervisors will use the information held by AML/CFT authorities in their supervisory processes, and AML/CFT supervisors will use the information from prudential supervisors to inform their approach to the AML/CFT supervision of institutions. The European Supervisory Authorities' forthcoming joint Guidelines on cooperation and information exchange will be an important step in strengthening supervisory relations in this regard.<sup>6</sup>

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<sup>6</sup> <https://eba.europa.eu/-/esas-consult-on-guidelines-on-cooperation-and-information-exchange-for-aml-cft-supervision-purposes>

## Understanding ML/TF risks

10. Prudential supervisors are invited to draw institutions' attention to the extent to which ML/TF concerns may have an impact on prudential objectives and highlight that they will endeavour to mutually exchange information and cooperate with AML/CFT authorities concerning individual institutions (including their branches) and group entities both domestically and across borders. This will include exchanging information on ML/TF risks, including those identified at the levels of Member States and the EU and set out, for example, in:
- i. the European Commission's supranational risk assessment<sup>7</sup>;
  - ii. the ESA's Joint Opinion on ML/TF risks<sup>8</sup>;
  - iii. national ML/TF risk assessments.<sup>9</sup>
11. It is, nonetheless, the responsibility of institutions to ensure that members of the management body and senior management are, at all times, of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Similarly, institutions are responsible for ensuring that their governance and risk management are adequate and enable them to identify, assess and manage the risks to which they are (or may be) exposed, including ML/TF risks.
12. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors, the Board of Supervisors has adopted this Opinion, which is addressed to competent authorities.

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

Done in Paris, xx July 2019

[SIGNED]

Jose Manuel Campa

Chairperson

For the Board of Supervisors

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<sup>7</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing_en)

<sup>8</sup> <https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money>

<sup>9</sup> Article 7 of Directive (EU) 2015/849