

European Banking Authority
One Canada Square,
Canary Wharf,
E14 5AA

8 February 2019

Dear Sir/Madam,

Draft joint guidelines on the cooperation and information exchange for the purposes of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (“The AML Colleges Guidelines”)

1. The Association for Financial Markets in Europe (“AFME”), the Institute of International Finance (“IIF”) and the European Banking Federation (“EBF”) (and collectively the “Associations”) are grateful for the opportunity to comment on the Joint Committee of the three European Supervisory Authorities¹ (the “Joint Committee”) consultation on guidelines on cooperation and information exchange for anti-money laundering and counter-terrorist financing (“AML” and “CFT”) supervision purposes (the “Consultation”).²
2. Where possible, we encourage the Joint Committee to maximise the use of existing structures which should be run as efficiently as possible. Setting up supervisory colleges has potential to add another layer of complexity for firms and duplicating existing procedures should be avoided in order to ensure seamless cooperation and information exchange between competent authorities. If the proposal proceeds, therefore, we would ask that it be implemented in the most efficient and effective way possible.
3. We also question the likely efficacy of the dispute resolution provisions in the draft guidelines. For example, Guideline 12.5 provides that: “where a permanent member [of an AML/CFT college] fails to act in accordance with the approach agreed in the AML/CFT college and has not provided any valid explanation, other permanent members should contact the responsible European Supervisory Authority with a request to mediate pursuant to article 31(c) of the ESA’s regulations.”
 - 3.1. It seems unlikely that a valid reason could be given by a permanent member of an AML/CFT college to explain why it would be unable to act in accordance with the approach agreed in the AML/CFT college. Therefore, we suggest deleting the wording “and has not provided any valid explanation”, as it could lead to a false belief that permanent members of AML/CFT colleges could have valid grounds for inactivity; this is completely contrary to the purpose of the draft guidelines in the first place.
 - 3.2. In addition, we think that merely trusting other permanent members to step in while other members fail to act is unlikely to produce tangible results in any reasonable timeframe. We have seen from recent history that AML/CFT issues, if not resolved quickly enough, can become major prudential issues affecting banks’ stability.

¹ EBA, EIOPA and ESMA – ESAs

² Joint Committee of the three European Supervisory Authorities, *Consultation on ESAs consult on guidelines on cooperation and information exchange for AML/CFT supervision purposes*, November 2018

- 3.3. Similar considerations apply to the processes under Guidelines 3.6 and 3.7, in relation to failures by competent authorities or lead supervisors in establishing AML/CFT colleges.
- 3.4. The possibility of infraction proceedings, or other more formal process for timely resolution of disputes, should therefore be included in the guidelines.
4. The guidelines will be important in ensuring that Member States do not prohibit or restrict the exchange of information or cooperation between competent authorities for AML/CFT supervision, in line with the international standards set out by the Financial Action Task Force³. However, in addition, it is also important to consider the broader implications of information sharing and how these guidelines, along with complementary workstreams undertaken by the EU institutions and authorities, could improve the environment for data exchange.
 - 4.1. It is well understood that an effective regime for combatting financial crime on an international basis is of paramount importance to the safety and soundness of the global financial system and proper management of risk in this area can be improved by better information sharing, both domestically and internationally. Such exchange is critical to well-functioning AML and CFT policies which fulfil the goal of protecting global finance from criminal incursion. We believe that there is a valuable opportunity in the context of the Consultation specifically to improve the relay of information between competent authorities in the EU. However, this alone will not solve the problems in fighting financial crime.
 - 4.2. It is also vital to ensure that the exchange of information across borders between entities of the same group (intra-financial institution information exchange), between entities of different groups (bank-to-bank information sharing) and through financial intelligence sharing partnerships between governments and the private sector is not impeded. This includes confirming that secrecy and privacy laws, and tipping-off or similar provisions, do not inhibit the exchange of relevant information, including Suspicious Activity Reports and associated underlying information, for the purposes of managing financial crime risk. The Joint Committee should examine how the draft guidelines could support the goals for broader information sharing and, specifically, how they can be used to support current public/private partnerships underway.⁴
 - 4.3. In that sense, reflecting on ways the guidelines could facilitate greater feedback to the private sector on the AML/CFT information exchanged via the envisioned AML/CFT Colleges would go a long way to developing a better AML/CFT architecture across the EU. We believe that it is important for the public sector to develop better lines of communication with the private sector, whereby the private sector receives regular feedback on information shared via Financial Intelligence Units and related law enforcement, prudential and supervisory bodies, alleviating ambiguity regarding the objectives and processes that will help to enhance the effectiveness of outcomes for fighting financial crime.

³ FATF Recommendation 40 and the associated 'Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems'.

⁴ Examples of where the Supervisory AML/CFT Colleges envisioned by the Consultation could be helpful in this regard is in the context of formal cooperation on information sharing between the Colleges and the Europol Financial Intelligence Public Private Partnership (EFIPPP), Netherlands Terrorist Financing Taskforce (TF Taskforce), the UK Joint Money Laundering Intelligence Taskforce (JMLIT) and other more nascent partnerships being considered in the EU.

- 4.4. The draft guidelines envisage the cooperation and information exchange between prudential supervisors and competent authorities⁵. The draft guidelines also plan to present a non-exhaustive list of situations when a permanent member may be asked to share information obtained as part of the AML/CFT college by a third-party competent authority that is not a member or observer at the college. These draft guidelines provide that such information can be disclosed only if the party who has disclosed has consented to such disclosure.⁶ Whilst we welcome the participation of third-party competent authorities in the work of the AML/CFT Colleges⁷, it is important to bear in mind the issues concerning compliance with the GDPR and associated domestic data privacy/data protection rules.
- 4.5. We would note that in February 2018, the FATF adopted revisions to Recommendation 2⁸ on national cooperation and coordination for the exchange of AML/CFT information. The amendments expanded the Recommendation to include information sharing between competent authorities and emphasised that cooperation should include coordination with the relevant authorities to ensure the compatibility of AML/CFT requirements with data protection and privacy secrecy rules and other similar provisions (e.g. data security/localisation).⁹ This change was intended to help improve the compatibility of AML/CFT and data protection and privacy rules and facilitate the exchange of information on financial crime related matters.
- 4.6. We believe that the current construction of the draft guidelines may inhibit certain disclosures for data privacy or data protection reasons. Therefore, we believe that the Joint Committee should take into account the FATF standards in this context and ensure that there is a mechanism for dialogue in place between the supervisory colleges and the relevant data protection and privacy authorities. This will help to ensure that information relevant to an incident of financial crime under consideration by an AML/CFT College can be fully examined by competent authorities outside the AML/CFT College with a legitimate interest in the matters at hand.
5. The Associations believe that taking a holistic view on the importance to enhancing cooperation between all sectors will help reduce criminal abuse of the financial system. We look forward to working with the Joint Committee as the guidelines are developed and implemented across the EU and as it continues to work in a coordinated fashion to address the broader issues regarding information sharing on a global basis. Also, we would in principle be happy to participate in any supervisory college if so invited to. Should you have any questions, please contact us as set out below.

Yours faithfully,

Will Dennis

⁵ Para 33 and Guideline 14

⁶ Para 28 and 29 and Guideline 11

⁷ One important reason is the continued close supervisory cooperation with the UK following Brexit.

⁸ FATF, *the FATF Recommendations*, 2012

⁹ FATF, *Outcomes FATF Plenary, 21-23 February 2018*

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