



---

**BANKING STAKEHOLDER GROUP**

CONSULTATION ON EBA/JC/2015/060 ON  
“GUIDELINES ON THE CHARACTERISTICS OF A RISK-BASED  
APPROACH TO ANTI-MONEY LAUNDERING AND TERRORIST  
FINANCING SUPERVISION AND THE STEPS TO BE TAKEN WHEN  
CONSIDERING SUPERVISION ON A RISK SENSITIVE BASIS”

# General Comments and Replies to Questions

---

BY THE EBA BANKING STAKEHOLDER GROUP

London, 21<sup>st</sup> January, 2016

## Foreword

The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) has issued two Consultation Papers on money laundering and countering the financing of terrorism (AML/CFT) Guidelines. These Guidelines are designed to promote a common understanding of the risk-based approach to AML/AFT and set out how they should be applied by credit and financial institutions and competent authorities across the EU. The Guidelines are based on mandates in Articles 17, 18(4), and 48(10) of Directive (EU)2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Joint Committee Consultation Paper (EBA/JC/2015/060).

This response has been prepared on the basis of comments circulated and shared among the BSG members.

### **Joint Consultation Paper EBA/JC/2015/060**

*Joint Guidelines under Article 48 (10) of Directive (EU) 2015/849 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.*

The Consultation Paper on the Risk-Based Supervision Guidelines is addressed to competent authorities for supervising credit and financial institutions' compliance with relevant AML/CFT obligations. The Guidelines specify the characteristics of a risk-based approach to AML/CFT supervision and set out what competent authorities should do to ensure that their allocation of supervisory resources is commensurate to the level of money laundering and terrorist financing risks in their jurisdiction.

## Replies to Questions

- a. **Do you agree with the way the risk-based approach to supervision is described in these guidelines?**

Broadly speaking, yes. Applying focus to those firms of higher risk is part of effective and sufficient supervision in the combat against money laundering and terrorist financing.

- b. In particular, do you agree that the four steps in these guidelines reflect the essential components of a risk based approach to supervision?

The BSG supports the approach of having risk-based supervision and we judge that the guidelines contain the essential components. However, this Consultation Paper does not reflect concretely whether and in what way regulatory and supervisory information is shared with firms. For example, it is mentioned that documentation and information from individual firms must be provided in order for competent authorities to assess the associated risks. It would be useful to share this information with firms, as a firm may assess its own risk differently from the supervisor. Sharing such insights would benefit both the firms as well as the supervisors. It is noted that such sharing may implicitly be captured in paragraph 72, in which case, it is suggested to recommend the assessment feedbacks more clearly.

- c. If you do not agree, what else do you think supervisors should focus on? Please explain by providing details on the principles you believe form part of an alternative approach. Please also clarify how this alternative approach meets the requirements of Directive (EU) 2015/849 and the international standards (FATF Recommendations).

As to 'Foreign risk factors' on page 15, a number of questions arise, as the paragraph explains that competent authorities should identify and assess those foreign markets where the subjects under assessment are significantly involved. Although referral to information issued by 'reputable international organisations' is included, does this not imply a risk that countries are assessed and rated differently across competent authorities? This could lead to difficulties for firms, especially when having branches or subsidiaries in countries with different country risk profiling.

Situations where a country is rated differently from one EU competent authority to another is unsustainable, both in relation to difficulties for firms with subsidiaries/branches in different countries, and as far as the risk of forum shopping is concerned. If there is, for example, an updated FATF assessment report for a country this should surely prevail in all EU jurisdictions, whilst if the competent authorities have to look for information elsewhere there is a clear risk of variations in assessment and rating.

This problem can be mitigated by creating a well-functioning convergence between the competent authorities in relation to country assessments, and we call on the ESAs to keep their guidelines under regular review and update such elements as regularly as appropriate and necessary.

d. Do you consider that the level of detail in the guidelines is appropriate? If you do not consider that it is appropriate, where do you think additional, or less, detail would be warranted?

Broadly speaking, yes: as stated in the guidelines themselves, considerably more detail would hinder the competent authorities to apply standards appropriately for the specific situations across the diversity of business models under surveillance (banks, insurers, investment firms, asset managers). The periodic reviews should also serve to identify with firms and industry representative bodies which areas of the guidelines would benefit from more detail, or less details.

e. What do you think the impact of these guidelines will be on the financial services industry?

In relation to costs for firms, the impact assessments of both consultation papers assume that the guidelines will create costs that are 'unlikely to be significant' (JC 60, p. 28) and 'close to zero' (JC 61, p. 88). However, an RBS approach entails supplementary operational focus on an ongoing basis that may create an additional workload and demands for additional resources. On the other hand, an RBS approach also has the potential to ease other operational aspects.

It is extremely difficult to quantify the balance, but the Joint Committee should acknowledge this uncertainty, rather than summarily assuming that the costs to firms are virtually non-existent. Besides, since some jurisdictions already apply RBS structures, it could be examined what the experience with transition costs and on-going costs were in these jurisdictions. This could give a more substantiated assumption of expected costs.

\*\*\*\*\*

Submitted on behalf of the EBA Banking Stakeholder Group

*David T. Llewellyn*  
Chairperson