

Legal Newsflash

EBA issues Guidelines on the role and responsibilities of the AML/CFT compliance officer

On 14 June 2022, the European Banking Authority (“EBA”) published the Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/84 (the “Guidelines”). The Guidelines aim to ensure a common interpretation and adequate implementation of AML/CFT internal governance arrangements across the EU in line with the requirements of Directive (EU) 2015/849 (the “AML Directive”).

The Guidelines describe the role, tasks and responsibilities of the AML/CFT compliance officer, the management body and senior manager in charge of AML/CFT compliance as well as internal policies, controls and procedures, as referred to in Articles 8, 45 and 46 of the AML Directive.

The Guidelines apply to credit or financial institutions (the “**Institutions**”) as defined in Article 3(1) and 3(2) of the AML Directive and address all existing management body structures, irrespective of the board structure used (a one tier and/or two tier and/or another structure) across Member States.

The AML/CFT role of the management body in its supervisory function

According to the Guidelines, the management body is responsible for approving the credit or financial institution’s overall AML/CFT strategy and for overseeing its implementation.

The management body, in its supervisory function, is responsible for overseeing and monitoring the implementation of the internal governance and internal control framework to ensure compliance with applicable requirements in the context of the prevention of money laundering and terrorism financing (“**ML/TF**”).

Legal Newsflash

As a part of its supervisory function, the management body should ensure that the appointed person responsible for AML/CFT (i.e. member of the management body or a senior manager, as appropriate): (i) has the knowledge, skills and experience to deal with the risks to which the institution is exposed and with the implementation of policies, procedures, etc.; (ii) has a sound understanding of the business model of the institution and the derived exposure of the institution to ML/TF risks; (iii) is promptly informed of any risks potentially affecting the institution.

The AML/CFT role of the management body in its management function

With regard to an institution's internal AML/CFT policies, controls and procedures, the management body in its management function is responsible inter alia for: (i) creating an appropriate and effective organizational and operational structure which is suitable for supporting compliance with the AML/CFT strategy adopted by the management body; (ii) ensuring implementation of internal AML/CFT policies and procedures; (iii) reviewing the AML/CFT compliance officer's activity report.

Identification of the management body's member responsible for AML/CFT and of a senior manager responsible for AML/CFT in the absence of the management body

In accordance with Article 46(4) of the AML Directive, entities subject to its provisions should identify the member of the management board who is responsible for the implementation of the laws, regulations and administrative provisions as required to comply with the AML Directive. The Guidelines state that this member of the management body should have sufficient knowledge, skills and experience in relation to ML/TF risks, and the implementation of AML/CFT policies, controls and procedures, with a good understanding of the credit or financial institution's business model and the sector in which the credit or financial institution operates.

At the same time, this member of the management body should (i) commit sufficient time and have sufficient resources to perform his/her AML/CFT duties effectively and (ii) regularly report to, without undue delay, the management body in its supervisory function.

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If no management body is in place, the institution should appoint a senior manager who is ultimately responsible for the implementation of the laws, regulations and administrative provisions as required to comply with the AML Directive.

Legal Newsflash

Duties of the member of the management body or senior manager responsible for AML/CFT

The member of the management body or the senior manager, as appropriate, who is responsible for AML/CFT should ensure that: (i) the entire management body is aware of the impact of ML/TF risks on their business-wide risk profile; (ii) he/she is the main contact point for the AML/CFT compliance officer; (iii) any concerns that the AML/CFT compliance officer has are duly addressed and, where this is not possible, are duly considered by the management body.

In addition to this, the member of the management body or the senior manager, as appropriate, who is responsible for AML/CFT has, inter alia, the following responsibilities: (i) ensuring that the AML/CFT policies, procedures and internal control measures are adequate and proportionate; (ii) informing the management body of any serious or significant AML/CFT issues and breaches and recommending remedy actions; (iii) supporting the management body in assessing the need for a dedicated AML/CFT unit to assist the AML/CFT compliance officer.

AML/CFT compliance officer

The AML/CFT compliance officer will be appointed at management level. He/she should have sufficient authority to propose all necessary or appropriate measures to ensure compliance with, and the effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function.

The management body determines whether the compliance officer's role will be carried out on a full-time basis or if it may be carried out by an employee or by an officer in addition to his/her existing functions within the institution. The AML/CFT compliance officer is part of the second line of defense and part of an independent function.

Appointment of a separate AML/CFT compliance officer is not mandatory if the institution is a sole trader or has a very limited number of employees. The same exception is applicable if the decision of the board not to appoint a separate AML/CFT compliance officer is due to at least the following criteria: (i) the nature of the institution's business and the ML/TF risks; (ii) the size of its operations in the jurisdiction, number of its customers, number and volume of transactions and number of employees; (iii) the legal form of the institution, including when the institution is part of a group.

In the above-mentioned case, an institution which does not appoint a separate AML/CFT compliance officer should organize the performance of the AML/CFT compliance officer tasks either by requiring a member of the management body or the senior manager responsible for AML/CFT to do so, or by outsourcing operational functions, or by a combination of the previous options.

Legal Newsflash

The role and responsibilities of the AML/CFT compliance officer should be clearly defined and documented and include: (i) development of a risk assessment framework; (ii) development of policies and procedures; (iii) onboarding of customers, in particular high-risk customers; (iv) monitoring of compliance; (v) reporting to the management body; (vi) reporting of suspicious transactions; and (vii) organizing training and awareness-raising activities.

As a part of the reporting responsibilities of the AML/CFT compliance officer, he/she should draft at least annually an activity report. This activity report should contain at least information related to: (i) ML/TF risk assessment; (ii) the resources of the organization; and (iii) policies and procedures.

Relationship of the AML/CFT compliance function with other functions

It is recommended that the independent audit function should not be combined with the AML/CFT compliance function. The compliance function and the independent AML/CFT compliance function form part of the institution's second line of defense.

Good cooperation to exchange information should take place between the head of risk management and the AML/CFT compliance officer. The AML/CFT compliance officer should cooperate with the risk function for the purpose of setting AML/CFT methodologies which are coherent with the risk management strategy of the credit or financial institution.

AML/CFT compliance function at group level

Institutions should adapt their internal control framework to the specific characteristics of their business, its complexity and the associated risks, taking into account the group context. The group AML/CFT compliance officer should fully cooperate with the AML/CFT compliance officer of each entity which forms a part of the group. The AML/CFT compliance officer of a subsidiary or branch should have a direct reporting line with the group AML/CFT compliance officer.

Links between the EBA Guidelines on AML/CFT officers and other guidelines from ESAs

The Guidelines on AML/CFT officers complement a number of other guidelines from European Supervisory Authorities (ESAs) as follows: (i) the EBA guidelines on internal governance; (ii) the joint EBA and European Securities and Markets Authority (ESMA) guidelines on the assessment of the suitability of members of the management body and key function holders; (iii) the ESMA guidelines on certain aspects of the MiFID II compliance function requirements; (iv) the European Insurance and Occupational Pensions Authority (EIOPA) guidelines on systems of governance; (v) the EBA guidelines on outsourcing arrangements; (vi) the EIOPA guidelines on outsourcing to cloud service providers; (vii) the ESMA guidelines on outsourcing to cloud service providers; and (viii) the EBA guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and Financial Intelligence Units.

Legal Newsflash

Entry into force

The Guidelines will apply from 1 December 2022. They are expected to be translated into the official EU languages. The deadline for competent authorities to report whether they comply with the Guidelines will be six months after the publication of the translations. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise, with reasons for non-compliance.

For additional details on the AML/CFT framework, please contact the dedicated team within KPMG Legal.

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