



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

The Director-General

Provisional request for advice to the European Banking Authority (EBA) regarding regulatory technical standards and guidelines under the future anti-money laundering / countering the financing of terrorism (AML/CFT) framework

With this provisional request the Commission seeks the EBA's technical advice on certain draft regulatory technical standards and guidelines to be developed under the future anti-money laundering / countering the financing of terrorism (AML/CFT) framework. These regulatory technical standards and guidelines should be developed by the future AML/CFT Authority (AMLA) and adopted by the Commission in accordance with Articles 38 to 41 of the proposal for a Regulation establishing AMLA (AMLAR) and pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU).

This request for technical advice is provisional since the new AML/CFT framework has not yet entered into force. The provisional agreement was reached by the Council and the European Parliament on the AMLAR on 13 December 2023 and on the AMLR and AMLD on 18 January 2024 which was endorsed by Coreper on 14 February. Currently, the three acts are subject to legal revision prior to their formal adoption by the European Parliament and the Council. Their publication in the EU Official Journal is planned for summer 2024.

This provisional request refers to the text of those mandates as included in the compromise text endorsed by the co-legislators in January 2024 ⁽¹⁾.

The Commission reserves its right to revise or supplement this mandate. The technical advice received on the basis of this request should not prejudice the decision of AMLA as to the draft regulatory technical standards that it will develop and submit to the Commission for adoption or as to the guidelines that it will issue nor on the Commission's final decision on those regulatory technical standards.

The mandate follows the AMLAR (**Article 12(5)**), the proposal for a 6th AML/CFT Directive (AMLD6) (**Article 31(2)**, **Article 39(7)**), the proposal for an AML/CFT Regulation (AMLR) (**Article 22(1)**). The Commission services have identified these draft regulatory technical standards as priority areas for the preparation of the future framework and its timely implementation, in view of the key contribution that they provide in the implementation of the risk-based approach underpinning the AML/CFT framework, whether at the level of the private sector, of the national supervisors or in the definition of the supervisory universe under AMLA's competence. Furthermore, the Commission services have identified the mandates under **Article 13(3) of AMLR** and **Article 39(8) of AMLD6** as further priority areas given the significant novelties introduced by the package and the current lack of harmonisation in these areas across Member States. However, as the Commission services are aware of the limited resources from which EBA can draw in delivering on this call for advice, EBA is invited to advance the work

⁽¹⁾ The texts of those acts can be accessed at: AMLR: [pdf \(europa.eu\)](#); AMLD: [pdf \(europa.eu\)](#); AMLA-R: [pdf \(europa.eu\)](#).

also on these mandates and propose options, should the preparation of a more advanced product prove not to be feasible.

According to **Article 12(5) of AMLAR**, AMLA must develop draft regulatory technical standards specifying:

a) the minimum activities to be carried out by a credit or financial institution under the freedom to provide services, whether through an infrastructure or remotely, for it to be considered as operating in a Member State other than that where it is established;

(b) the methodology based on the benchmarks referred to in paragraph 4 and 4a for classifying the inherent and the residual risk profile of credit or financial institution or groups thereof as low, medium, substantial or high.

According to **Article 31(2) of AMLD6**, AMLA must develop draft regulatory technical standards to set out the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile shall be reviewed. Such frequency must take into account any major events or developments in the management and operations of the obliged entity, as well as the nature and size of the business.

According to **Article 39(7) of AMLD6**, AMLA is to develop draft regulatory technical standards to define:

(a) indicators to classify the level of gravity of breaches;

(b) criteria to be taken into account when setting the level of pecuniary sanctions or taking administrative measures pursuant to that Section;

(c) a methodology for the application of periodic penalty payments pursuant to Article 41a of AMLD6, including their frequency.

According to **Article 22(1) of AMLR**, AMLA must develop draft regulatory technical standards to specify:

(a) the requirements that apply to obliged entities pursuant to Article 16 and the information to be collected for the purpose of performing standard, simplified and enhanced customer due diligence pursuant to Articles 18 and 20 and Articles 27(1) and 28(4) of AMLR, including minimum requirements in situations of lower risk;

(b) the type of simplified due diligence measures which obliged entities may apply in situations of lower risk pursuant to Article 27(1) of AMLR, including measures applicable to specific categories of obliged entities and products or services, having regard to the results of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of AMLD6;

(ba) the risk factors associated with features of electronic money instruments that should be taken into account by supervisors when determining the extent of the exemption under Article 15(3b);

(c) the reliable and independent sources of information that may be used to verify the identification data of natural or legal persons for the purposes of Article 18(4) and (5) of AMLR;

(d) the list of attributes which electronic identification means and relevant qualified trust services referred to in Article 18(4), point (b) of AMLR must feature in order to fulfil the requirements of Article 16(1), points (a), (b) and (c) of AMLR in case of standard, simplified and enhanced customer diligence.

In addition, as regards the two mandates also identified as priority by the Commission but for which EBA's contribution is dependent on the available resources:

According to **Article 13(3) of AMLR**, AMLA is to develop draft regulatory technical standards to specify the minimum requirements of group-wide policies, including minimum standards for information sharing within the group, the criteria for identifying the parent undertaking in the cases covered by subpoint (b) of Article 2, point (29) of AMLR and the conditions under which the provisions of this Article apply to entities that are part of structures which share common ownership, management or compliance control, including networks or partnerships, as well as the criteria for identifying the parent undertaking in the Union in those cases.

According to **Article 39(8) of AMLD6**, AMLA is to issue guidelines on the base amounts for the imposing of pecuniary sanctions relative to turnover, broken down per type of breach and category of obliged entities.

The European Parliament and the Council shall be duly informed about this provisional request.

1. Context

1.1. Scope

On 20 July 2021, the Commission published its proposal for an AML/CFT Package, comprising four legislative proposals, namely AMLR, AMLD6, AMLAR and a recast of Regulation (EU) 2015/847 which has since been adopted ⁽²⁾. The Council endorsed its negotiating position on AMLAR on 29 June 2022 and on AMLR and AMLD6 on 7 December 2022. The European Parliament's plenary session of 17 April 2023 endorsed its negotiating mandate on the three acts. The co-legislators came to an agreement on the compromise texts of the three acts in December for AMLAR and January for AMLR and AMLD. Legal revision of the texts is currently ongoing. For this reason, and without prejudice to the final texts of those three acts after revision, this request refers to the texts of those acts as in the compromise texts agreed between the co-legislators.

The future framework will harmonise requirements for private sector operators, ensure convergence of supervisory practices across the Union and facilitate cooperation among supervisors as well as coordination in the application of supervisory measures towards entities and groups with a cross-border footprint. One of the main novelties of the framework is the establishment of a dedicated AML/CFT Authority, which will be responsible for the supervision of the riskiest cross-border entities in the Union.

This request for a call for advice concerns possible draft regulatory technical standards:

- Under **Article 12(5) of AMLAR** to be developed by AMLA by 1 January 2026, specifying:
 - a) the minimum activities to be carried out by a credit or financial institution under the freedom to provide services, whether through an infrastructure or remotely, for it to be considered as operating in a Member State other than that where it is established;
 - (b) the methodology based on the benchmarks referred to in paragraph 4 and 4a for classifying the inherent and the residual risk profile of credit or financial institution or groups thereof as low, medium, substantial or high.
- Under **Article 31(2) of AMLD6** to be developed by AMLA within 2 years of the date of entry into force of the Directive, to set out the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile shall be reviewed. Such frequency must take into account any major events or developments in the management and operations of the obliged entity, as well as the nature and size of the business.
- Under **Article 39(7) of AMLD6** to be developed by AMLA within 2 years of the date of entry into force of the Directive, to define:
 - (a) indicators to classify the level of gravity of breaches;

⁽²⁾ Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (Text with EEA relevance), OJ L 150, 9.6.2023, p. 1–39.

- (b) criteria to be taken into account when setting the level of pecuniary sanctions or taking administrative measures pursuant to that Section;
 - (c) a methodology for the application of periodic penalty payments pursuant to Article 41a of AMLD6, including their frequency.
- Under **Article 22(1) of AMLR** to be developed by AMLA within 2 years of the date of entry into force of the Regulation, to specify:
- (a) the requirements that apply to obliged entities pursuant to Article 16 and the information to be collected for the purpose of performing standard, simplified and enhanced customer due diligence pursuant to Articles 18 and 20 and Articles 27(1) and 28(4) of AMLR, including minimum requirements in situations of lower risk;
 - (b) the type of simplified due diligence measures which obliged entities may apply in situations of lower risk pursuant to Article 27(1) of AMLR, including measures applicable to specific categories of obliged entities and products or services, having regard to the results of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of AMLD6;
 - (ba) the risk factors associated with features of electronic money instruments that should be taken into account by supervisors when determining the extent of the exemption under Article 15(3b);
 - (c) the reliable and independent sources of information that may be used to verify the identification data of natural or legal persons for the purposes of Article 18(4) of AMLR;
 - (d) the list of attributes which electronic identification means and relevant trust services referred to in Article 18(4), point (b) of AMLR must feature in order to fulfil the requirements of Article 16, points (a), (b) and (c) of AMLR in case of standard, simplified and enhanced customer diligence.

The Commission services have identified these draft regulatory technical standards as priority areas for the preparation of the future framework and its timely implementation, in view of the key contribution that they provide in the implementation of the risk-based approach underpinning the AML/CFT framework, whether at the level of the private sector, of the national supervisors or in the definition of the supervisory universe under AMLA's competence.

This request for a call for advice concerns also work on draft RTS and guidelines:

- Under **Article 13(3) of AMLR** to be developed by AMLA within 2 years of the date of entry into force of the Regulation, to specify the minimum requirements of group-wide policies, including minimum standards for information sharing within the group, the criteria for identifying the parent undertaking in the cases covered by subpoint (b) of Article 2, point (29) of AMLR and the conditions under which the provisions of this Article apply to entities that are part of structures which share common ownership, management or compliance control, including networks or partnerships, as well as the criteria for identifying the parent undertaking in the Union in those cases.
- Under **Article 39(8) of AMLD6** to be issued by AMLA within 2 years of the date

of entry into force of the Directive, on the base amounts for the imposing of pecuniary sanctions relative to turnover, broken down per type of breach and category of obliged entities.

The Commission services have identified these mandates as further priority areas given the significant novelties introduced by the package and the current lack of harmonisation in these areas across Member States. However, as the Commission services are aware of the limited resources from which EBA can draw in delivering on this call for advice, EBA is invited to advance the work also on these mandates and propose options, should the preparation of a more advanced product prove not to be feasible.

Further detail on how to approach these aspects is included under point 3.

1.2. Principles that the EBA should take into account

On the working approach, the EBA is invited to take into account the following principles:

- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of those Acts. It should be simple and avoid excessive financial, administrative or procedural burdens for obliged entities and national supervisors, as well as for AMLA.
- While preparing its advice, the EBA should seek coherence within the regulatory framework of the Union.
- Given that the mandates in question pertain to matters currently falling under the responsibility of national supervisors, or closely linked to their supervisory tasks vis-à-vis obliged entities, national AML/CFT supervisors represented in EBA should be actively involved in the drawing up and assessment of options, as well as in the drafting of the response to the call for advice.
- Whilst the EBA should focus on the financial sector, to the extent that the principles of risk-based supervision and customer due diligence are common to both the financial and non-financial sector, the EBA should provide input of a horizontal nature. Horizontal input applicable to all categories of obliged entities should be clearly flagged as such.
- The EBA is invited to justify its advice by providing an analysis of all the options considered and proposed. The EBA should provide the Commission with a description of the problem, the objectives of the technical advice, possible options for consideration and a comparison of the main arguments for and against the considered options. The analysis should justify EBA's choices vis-à-vis the main considered options.
- The EBA's technical advice should not take the form of a legal text. However, the EBA should provide the Commission with a clear and structured ("articulated") text, accompanied by sufficient and detailed explanations. Furthermore, the technical advice should be presented in an easily understandable language respecting current terminology in the Union.
- Given that the input from EBA will be instrumental for ensuring that the regulatory technical standards can be submitted by AMLA to the Commission for adoption in due time, they should be very advanced work, which can be quickly considered for

a decision by AMLA's General Board. With this objective in view, EBA is also invited to consult relevant stakeholders as early as possible in order to have at its disposal all relevant information for the completion of this work.

- The EBA should address to the Commission any question to clarify the text of the draft Acts that the EBA consider of relevance to the preparation of its technical advice.

2. Procedure

The Commission is requesting EBA's technical advice in view of the development of certain draft regulatory technical standards and guidelines by AMLA pursuant to the various Acts of the AML/CFT package, and in particular regarding the questions referred to in section 3 of this provisional request.

The provisional request takes into account the AMLAR (Article 12(5)), AMLD6 (Article 31(2), Article 39(7)) and AMLR (Article 22(1)) and the EBA Regulation and furthermore Article 13(3) of AMLR and Article 39(8) of AMLD.

The Commission reserves the right to revise or supplement this mandate. Notwithstanding the planned transfer of regulatory competence in the AML/CFT framework from the EBA to AMLA, this technical advice is sought taking into account the current EBA mandate in this field and that such a competence will be exercised concurrently by the two agencies during the first year of operation of AMLA. The technical advice received on the basis of this request will not prejudice the decision of AMLA as to the draft regulatory technical standards that it will develop and submit to the Commission for adoption or as to the guidelines that it will issue, nor the Commission's final decision on those regulatory technical standards.

The Commission must duly inform the European Parliament and the Council about this provisional request.

3. The EBA is invited to provide technical advice on the following matters

a) Draft regulatory technical standard setting out the methodology for classifying the risk profile of cross-border credit or financial institution that may be selected for supervision by the future AML/CFT Authority

Article 12 of AMLAR provides the procedure for the assessment of obliged entities in the financial sector (including groups thereof) with a view to identifying those that should be supervised at Union level by AMLA. Article 12(5) includes a mandate for the Authority to develop draft regulatory standards specifying:

(a) the minimum activities to be carried out by a credit or financial institutions under the freedom to provide services, whether through an infrastructure or remotely, for it to be considered as operating in a Member State other than that where it is established;

(b) the methodology based on the benchmarks referred to in paragraph 4 and 4a of that Article for classifying the inherent and the residual risk profile of credit or financial institution or groups thereof as low, medium, substantial or high.

According to paragraph 1 of that Article, for the purposes of carrying out the tasks listed

in Article 5(2) of the AMLAR, AMLA, in collaboration with financial supervisors, is to carry out a periodic assessment of credit and financial institutions and groups of credit and financial institutions referred to in paragraph 3 where they operate in at least six Member States, including the home Member State, either through establishments or under the freedom to provide services in the Member States other than the Member State where the obliged entity's head office is established, regardless of whether the activities are carried out through an infrastructure in their territory or remotely.

Paragraph 4 of that Article, as included in the compromise text endorsed by the co-legislators, includes the following indicators of inherent risk to be taken into account:

- (a) with respect to customer-related risk: the share of non-resident customers from third countries identified pursuant to Chapter III Section 2 of the AMLR; the presence and share of customers identified as Politically Exposed persons ('PEPs');
- (b) with respect to products and services offered:
 - (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment;
 - (iii) for money remittance service providers, the significance of aggregate annual emission and reception activity of each remitter in countries identified pursuant to Chapter III Section 2 of the AMLR;
 - (iiib) the relative volume of products, services or transactions that offer a considerable level of protection of client's privacy and identity or other form of anonymity;
- (c) with respect to geographical areas:
 - (i) the annual volume of correspondent banking services, or correspondent crypto-asset services, provided by Union financial sector entities in third countries identified pursuant to Chapter III Section 2 of the AMLR;
 - (ii) the number and share of correspondent banking clients or crypto-asset clients in third countries identified pursuant to Chapter III Section 2 of the AMLR;

According to paragraph 4a of Article 12 of the compromise text on the AMLAR, for each category of obliged entities referred to in paragraph 3 of that Article, the assessment of residual risk in the assessment methodology is to include benchmarks for the assessment of the quality of internal policies, controls and procedures put in place by obliged entities to mitigate their inherent risk.

The EBA advice should cover notably:

- (a) As regards the classification of the risk associated with the obliged entities, the methodology for assessing its inherent risk. Regarding the residual risk, the advice should reflect on possible approaches to assessment of the residual risk, including on the basis of the advice to be provided in relation to the draft technical standards under Article 31(2) of the AMLD6.
- (b) Benchmarks as set out in paragraphs 4 and 4a.

- (c) As regards groups of obliged entities, possible approaches to the development of a consolidated risk assessment.

When developing the benchmarks for the assessment of inherent and residual risk, the advice should specify the data and information that would need to be collected from obliged entities and/or supplied by the supervisory authorities in the context of the assessment. It should be further specified whether such data is already collected in the process of regular supervision and available to supervisory authorities, or whether it would need to be requested and structured in a certain manner by the obliged entities to ensure an expeditious assessment.

b) Draft regulatory technical standard on risk-based supervision

According to Article 31(1) of the AMLD6, Member States are to ensure that supervisors apply a risk-based approach to supervision. To that end, Member States must ensure that they:

- (a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;
- (b) assess all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities;
- (c) base the frequency and intensity of on-site, off-site and thematic supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State.

Article 31(2) of AMLD6 provides that AMLA is to develop draft regulatory technical standards by 2 years after entry into force of AMLD6 setting out the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile must be reviewed.

The frequency of reviewing the obliged entities' risk profile must take into account any major events or developments in the management and operations of the obliged entity, as well as the nature and size of the business.

The EBA is invited to provide technical advice to prepare the work for the development by AMLA of the regulatory technical standards pursuant to Article 31(2) of AMLD6.

In developing such advice, the EBA should focus on the financial sector (including crypto-asset service providers) consistent with its competences in the AML/CFT field. Nonetheless, to the extent that principles of risk-based supervision are common to the financial and non-financial sector, the EBA should also include in its advice horizontal input. That horizontal input should be clearly marked as such.

c) Draft regulatory technical standard on the information necessary for the performance of customer due diligence

Chapter III of AMLR sets out customer due diligence requirements applicable to obliged entities. In order to contribute to the objective of harmonising requirements across the

Union consistent with a risk-based approach in this field, Article 22(1) of AMLR mandates AMLA to develop draft regulatory technical standards to specify:

(a) the requirements that apply to obliged entities pursuant to Article 16 and the information to be collected for the purpose of performing standard, simplified and enhanced customer due diligence pursuant to Articles 18 and 20 and Articles 27(1) and 28(4) of AMLR, including minimum requirements in situations of lower risk;

(b) the type of simplified due diligence measures which obliged entities may apply in situations of lower risk pursuant to Article 27(1) of AMLR, including measures applicable to specific categories of obliged entities and products or services, having regard to the results of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of AMLD6;

(c) the reliable and independent sources of information that may be used to verify the identification data of natural or legal persons for the purposes of Article 18(4) and (5) of AMLR;

(d) the list of attributes which electronic identification means and relevant trust services referred to in Article 18(4), point (b) of AMLR must feature in order to fulfil the requirements of Article 16, points (a), (b) and (c) of AMLR in case of standard, simplified and enhanced customer diligence.

Article 22(2) of AMLR requires the development of the requirements and measures under points (a) and (b) to be based on the following criteria:

(a) the inherent risk involved in the service provided;

(aa) the risks associated with categories of customers;

(b) the nature, amount and recurrence of the transaction;

(c) the channels used for conducting the business relationship or the occasional transaction.

The EBA is invited to provide technical advice to prepare the work for the development by AMLA of the regulatory technical standards pursuant to Article 22(1) of AMLR.

In developing such advice, the EBA is requested to look at the specificities of each sector. Consistent with its mandate in this field, the EBA should focus on the financial sector (including crypto-asset service providers). Nonetheless, to the extent that principles of customer due diligence are common to the financial and non-financial sector, the EBA should also include in its advice horizontal input. That horizontal input should be clearly marked as such.

d) Draft regulatory technical standard on criteria to be taken into account when setting the level of pecuniary sanctions or taking administrative measures

Article 39 of the AMLD6 sets out provisions on pecuniary sanctions and administrative measures. According to Article 39(7) of the AMLD6, AMLA is to develop draft regulatory technical standards to define:

- (a) indicators to classify the level of gravity of breaches;
- (b) criteria to be taken into account when setting the level of pecuniary sanctions or taking administrative measures pursuant to Section 4 of the AMLD6;
- (c) a methodology for the application of periodic penalty payments pursuant to Article 41a of the AMLD6, including their frequency.

Article 39(1) provides that Member States are to ensure that obliged entities can be held liable for breaches of the AMLR in accordance with Section 4 of the AMLD6 on pecuniary sanctions and administrative measures. According to paragraph 2 of that Article, without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States are to lay down rules on pecuniary sanctions and administrative measures and ensure that supervisors may impose such pecuniary sanctions and administrative measures with respect to breaches of the AMLR or the TFR and shall ensure that they are applied. Article 39(2) further provides that any resulting sanction or measure imposed pursuant to Section 4 of the AMLD6 must be effective, proportionate and dissuasive.

Article 39(5) sets out that Member States shall ensure that, when determining the type and level of pecuniary sanctions or administrative measures, supervisors take into account all relevant circumstances, including where applicable:

- (a) the gravity and the duration of the breach;
- (aa) the number of instances of the same breach;
- (b) the degree of responsibility of the natural or legal person held responsible;
- (c) the financial strength of the natural or legal person held responsible, including in light of its total turnover or annual income;
- (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
- (e) the losses to third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person held responsible with the competent authority;
- (g) previous breaches by the natural or legal person held responsible.

Article 41a(1) provides with regard to periodic penalty payments that Member States are to ensure that, where obliged entities fail to comply with administrative measures applied by the supervisor pursuant to points (b), (d), (da) and (f) of Article 41(1) within the deadlines set, supervisors are able to impose periodic penalty payments in order to compel compliance with those administrative measures. According to paragraph 2 the periodic penalty payments must be effective and proportionate. The periodic penalty payments are to be imposed until the obliged entity or person concerned complies with the relevant administrative measures. Paragraph 3 provides that notwithstanding paragraph 2, the amount of a periodic penalty payment shall not exceed 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. According to paragraph 4 periodic penalty payments may be imposed for a period of no more than six months following the

supervisor's decision. Where, upon expiry of that period, the obliged entity has not yet complied with the administrative measure, Member States are to ensure that supervisors can apply periodic penalty payments for an additional period of no more than six months. Paragraph 5 provides that Member States are to ensure that a decision imposing a periodic penalty payment may be taken as of the date of the application of the administrative measure. The periodic penalty payment is to apply as of the date when that decision is imposed.

The EBA is invited to provide technical advice to prepare the work for the development by AMLA of the regulatory technical standards pursuant to Article 39(7) of the AMLD6.

In developing such advice, the EBA is requested, consistent with its mandate in this field, to focus on the financial sector (including crypto-asset service providers). Nonetheless, to the extent that principles are common to the financial and non-financial sector, the EBA should also include in its advice horizontal input. That horizontal input should be clearly marked as such.

In addition, the Commission services have identified two additional mandates as further priority areas given the significant novelties introduced by the package and the current lack of harmonisation in these areas across Member States. However, as the Commission services are aware of the limited resources from which EBA can draw in delivering on this call for advice, EBA is invited to advance the work also on these mandates and propose options, should the preparation of a more advanced product prove not to be feasible.

e) Draft regulatory technical standard on minimum requirements of group-wide policies

Article 13 of the AMLR sets out provisions regarding group-wide requirements.

Article 13(3) of the AMLR mandates AMLA to develop draft regulatory technical standards to specify the minimum requirements of group-wide policies, including

- minimum standards for information sharing within the group,
- the criteria for identifying the parent undertaking in the cases covered by subpoint (b) of Article 2, point (29) of the AMLR and
- the conditions under which the provisions of Article 13 of the AMLR apply to entities that are part of structures which share common ownership, management or compliance control, including networks or partnerships, as well as the criteria for identifying the parent undertaking in the Union in those cases.

Article 13(1) of the AMLR lays down that a parent undertaking is to ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of Chapter 2 of the AMLR apply in all branches and subsidiaries of the group in the Member States and, for groups whose head office is in the Union, in third countries. To this end, a parent undertaking shall perform a group-wide risk assessment, taking into account the business-wide risk assessment performed by all branches and subsidiaries of the group, and establish and implement group-wide policies, procedures and controls, including group-wide policies to ensure that employees within the group are aware of the requirements arising from this Regulation, group-wide policies on data protection and

policies on information sharing within the group for AML/CFT purposes. The group-wide policies, procedures and controls and the group-wide risk assessments must include all the elements listed in Articles 7 and 8 of the AMLR.

According to Article 13(2) of the AMLR, the policies, procedures and controls pertaining to the sharing of information referred to in paragraph 1 are to require obliged entities within the group to exchange information when such sharing is relevant for the purposes of customer due diligence and money laundering and terrorist financing risk management. The sharing of information within the group shall cover in particular the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and of the occasional transactions and the suspicions, accompanied by the underlying analyses, that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the FIU.

The second subparagraph of Article 13(2) further specifies that the group-wide policies, procedures and controls shall not prevent entities within a group which are not obliged entities to provide information to obliged entities within the same group where such sharing is relevant for those obliged entities to comply with requirements set out in this Regulation.

The third subparagraph of Article 13(2) sets out that parent undertakings shall put in place group-wide policies, controls and procedures to ensure that the information exchanged pursuant to the first and second subparagraph is subject to sufficient guarantees in terms of confidentiality, data protection and use of the information, including to prevent its disclosure.

Article 2(29a), point (b), provides that ‘parent undertaking’ means for groups whose head office is outside of the Union, where two or more subsidiary undertakings are obliged entities established in the Union, an undertaking within that group established in the Union that:

- (i) is an obliged entity pursuant to Article 3 of the AMLR;
- (ii) is an undertaking that is not a subsidiary of another undertaking that is an obliged entity established in the Union;
- (iii) has a sufficient prominence within the group and a sufficient understanding of the operations of the group that are subject to the requirements of this Regulation, and
- (iv) is given the responsibility of implementing group-wide requirements under Chapter II, Section 2 of the AMLR;

The EBA is invited to provide technical advice to prepare the work for the development by AMLA of the regulatory technical standards pursuant to Article 13(3) of the AMLR.

In developing such advice, the EBA is requested to look at the specificities of the different types of groups, including:

- (a) different structures (e.g. “entities permanently affiliated to a central body” or “financial institutions which are members of the same institutional protection scheme” under Articles 10 and 113(7) of CRD, respectively);

(b) the situation of mixed groups (i.e. including both financial and non-financial obliged entities);

(c) the situation of groups that include undertakings that are not obliged entities.

Consistent with its mandate in this field, the EBA should focus on the financial sector (including crypto-asset service providers). Nonetheless, to the extent that principles of group-wide policies, procedures and controls are common to the financial and non-financial sector, the EBA should also include in its advice horizontal input. That horizontal input should be clearly marked as such. In addition, principles that apply to mixed groups should also be included in the advice and clearly identified as such.

f) Draft guidelines on base amounts for the imposing of pecuniary sanctions

Article 39(5), point (c), of the AMLD6 sets out that Member States shall ensure that, when determining the type and level of pecuniary sanctions or administrative measures, supervisors take into account all relevant circumstances, including where applicable, the financial strength of the natural or legal person held responsible, including in light of its total turnover or annual income.

According to Article 39(8) of AMLD6, AMLA is to issue guidelines on the base amounts for the imposing of pecuniary sanctions relative to turnover, broken down per type of breach and category of obliged entities.

The EBA is invited to provide technical advice to prepare the work for the development by AMLA of the regulatory technical standards pursuant to Article 39(8) of the AMLD6.

In developing such advice, the EBA is requested to look at the specificities of obliged entities in terms of size measured in relation to turnover. Consistent with its mandate in this field, the EBA should focus on the financial sector (including crypto-asset service providers). Nonetheless, to the extent that principles are common to the financial and non-financial sector, the EBA should also include in its advice horizontal input. That horizontal input should be clearly marked as such.

4. Indicative timeline

This provisional request takes into consideration that the EBA requires sufficient time to prepare its technical advice and that AMLA needs to develop the regulatory standards within a determined timeframe and in accordance with the procedure to be laid down in Articles 38 to 41 of the AMLAR.

Specifically, the AMLAR requires AMLA to develop the draft regulatory technical standard mandated under Article 12(5) by 1 January 2026, while the AMLD6 and AMLR mandate the development of the regulatory technical standards respectively under Article 31(2), 39(7) and 22(1) as well as under Article 13(3) and the guidelines under Article 39(8) of AMLD6 within two years of the entry into force of those acts. In order for the future framework to be fully operational and for AMLA to be able to complete the regulatory framework and implement the measures for the selection of entities under its supervision, it is of the outmost importance to start working on this issue as soon as possible.

The deadline set to the EBA to deliver the technical advice is 31 October 2025.

