

EBA CONSULTATION PAPER Draft Guidelines on the role and responsibilities of the AML/CFT Compliance Officer

AMAFI comments

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 150 members operating for their own account or for clients in equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on the European Banking Authority (EBA)'s consultation paper regarding the draft "guidelines on the role of the AML/CFT Compliance Officer" or "AMLCO Guidelines"¹.

Nowadays, considering the importance taken by anti-money laundering and countering financing of terrorism ("AML/CFT") issues, investment firms are legitimately subject to many requirements on this topic. Those are time and resource consuming at a time when the financial sector faces numerous challenges notably in terms of regulation. In that context, the AML/CFT governance set-up is particularly important as it needs obliged entities' resources to be allocated and concentrated on different key aspects in accordance with applicable law. However, and more particularly, although the requirement for financial obliged entities to appoint an AMLCO was established already in the 4th AML Directive², the implementation of such requirement has been uneven across sectors and Member States. That is why, the EBA's draft Guidelines aim to establish, for the first time at European Union (EU) level, the whole AML/CFT governance set-up, alongside the specific role, tasks and responsibilities of AML/CFT compliance officers and the management body.

Before responding to the specific questions of EBA's consultation paper, AMAFI would like to point out the following general comments:

- AMAFI welcomes the EBA's proposed Guidelines on the role of AML/CFT compliance officers and management body as they aim to harmonise obliged entities' practices and AML/CFT governance set-ups in the EU.

¹ EBA – Consultation Paper – Draft Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/849 ([EBA/CP/2021/31](#)).

² Directive (EU) 2015/849 of the European Parliament and of the of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ([link](#)).

- AMAFI suggests the EBA to consider the European Commission (EC)'s work on AML/CFT and more precisely the Commission's package of legislative proposals to strengthen the EU's AML/CFT rules³. Indeed, the EC's package includes a [proposal for a new regulation on AML/CFT](#) with directly applicable rules, containing proposed obligations on the articulation of obliged entities' AML/CFT governance set-up (see EC's proposal for a regulation on AML/CFT, Chapter II on obliged entities' internal policies, controls and procedures). In that way it would ensure legal and regulatory stability in the matter.

RESPONSES TO EBA QUESTIONS

Section 2: 'Subject matter, scope and definitions'

Question 1 Do you have any comments on the section 'Subject matter, scope and definitions'?

AMAFI partially agrees with the proposed Section 2 of the draft AMLCO Guidelines.

Indeed, and for educational purposes and clarity of EBA's doctrine, AMAFI suggests adding (i) a definition of "AML/CFT compliance officer" and (ii) definitions of abbreviations used throughout the draft Guidelines (e.g. "FIU" and "STORs" abbreviations).

Concerning AMAFI's suggestion of adding a definition of "AML/CFT Compliance Officer" concept, since it is central in these draft AMLCO Guidelines and its role and responsibilities are subject to a proper Guideline (see *Guideline 4.2*) which is actually the longest one in terms of description and words. Furthermore, even if there is not a proper harmonised definition of this "AML/CFT Compliance Officer" concept in EU law, the EBA could rely upon article 8 (4) (a) of the 4th AML Directive, its draft Guideline 4.2, and article 9 (3) of [the European Commission's proposal for a Regulation on AML/CFT](#) (which in a way takes into account the operational dimension of the AMLCO definition), and the financial sector experience to propose a generic definition of it. In that sense and moreover, AMAFI wishes to suggest to the EBA to use some concrete examples of the AMLCO's day-to-day operations / missions (precising it is a non-exhaustive list): legal watch, monitoring compliance, preparing and updating policies and procedures, reporting to the management body, reporting of suspicious transactions to the FIU, training and awareness, reporting to the national competent authority (as it is actually and partially exposed in the proposed *Guideline 4.2.4*).

Then, AMAFI wishes to point out there is no definition of the "Collective Investment Sector" concept mentioned in paragraph 34 of the draft Guideline 4.2.2 (*Proportionality criteria for the appointment of a separate AML/CFT compliance officer*). For the same reasons stated above, AMAFI also suggests adding a definition of this concept in the Definitions provided in Section 2. AMAFI believes the definition of this concept should be based and accompanied on / of practical examples.

³ Press release from the Commission on the presentation of an ambitious package of legislative proposals to strengthen the EU's AML/CFT rules, European Commission, 20 July 2021 ([link](#)).

Therefore, AMAFI would like to propose the following changes in the Definitions provided in Section 2 of the draft AMLCO Guidelines:

<i>Proposed amendments</i>	
Definitions <u>and abbreviations</u>	
9. Unless otherwise specified, terms and defined in Directive (EU) 2015/849 have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:	
<u>Definitions</u>	
<u>AML/CFT Compliance Officer</u>	[EU definition of “AMLCO” concept]
<u>Collective Investment Sector</u>	[EU definition of “Collective Investment Sector”]
Management Body [...]	
<u>Abbreviations</u>	
<u>FIU</u>	<u>Financial Intelligence Unit</u>
<u>STRs</u>	<u>Suspicious Transaction Reports</u>

Section 4: Guideline 4.1 ‘Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT’

Question 2 Do you have any comments on Guideline 4.1?

AMAFI welcomes the proposed Guideline 4.1. Nevertheless, AMAFI would like to draw the attention of the EBA on paragraph 16 (c) of the proposed Guideline 4.1.3 (“*Role of the management function in the AML/CFT framework*”) concerning the approval by the financial sector operator’s management body (in its management function) of the AML/CFT compliance officer’s activity report (as referred to in paragraph 52 of draft Guideline 4.2.4 on the “*Tasks and role of the AML/CFT compliance officer*”) and the responsibility to ensure its completeness and seriousness and accuracy. Indeed, as financial firms established in France are already obliged to report to the national competent authority different AML/CFT compliance officer’s reports which are previously approved and checked annually by the investment firms’ management body, AMAFI proposes to precise the AML/CFT compliance officer’s activity report mentioned in paragraphs 16 (c) and 52 does not supplement the already existing AML/CFT regulatory reports due to a national competent authority.

AMAFI would therefore like to propose the following amendments in paragraph 16 (c) of Guideline 4.1:

Proposed amendments

16. To relation to internal policies, controls and procedures referred to in Articles 8(3) and 8(4) of Directive (EU) 2015/849, a financial sector operator's management body in its management function should have the following AML/CFT tasks and responsibilities:

[...]

- c) approving the AML/CFT compliance officer's activity report **mentioned in paragraph 52 of the present Guidelines (*)**, and ensuring its completeness, seriousness and accuracy;

(*) It should be specified that the AML/CFT compliance officer's activity report may be in some Member States composed of different regulatory reports due to the national competent authority.

[...]

Section 4: Guideline 4.2 'Role and responsibilities of the AML/CFT compliance officer'

Question 3 Do you have any comments on Guideline 4.2?

AMAFI generally agrees with the proposed Guideline 4.2 but wishes to propose some amendments.

Firstly, as stated above (see *AMAFI's answer to Question 1*), AMAFI suggests a definition of the "Collective Investment Sector" concept mentioned in paragraph 34 to be added in the Definitions provided in Section 2 of the draft AMLCO Guidelines accompanied with examples in order to clarify it.

Secondly, concerning the proposed Guideline 4.2.4 ("*Tasks and role of the AML/CFT compliance officer*") and its subsection "*c) Customers, including high risk customers*", AMAFI wishes to draw the attention of the EBA on paragraph 44. This paragraph states that "*The AML/CFT compliance officer should exercise an advisory role before a final decision is taken by senior management on onboarding new high risk customers or re-classifying existing customers into the high risk category, unless the power to approve the establishment of such relationships is entrusted directly to the AML/CFT compliance officer*". However, in some investment firms subjected to EU AML/CFT regulatory framework, these decisions do not rely on and/or do not come within the responsibility of the AML/CFT compliance officer. Indeed, according to the internal organisation of some investment firms established in France, these decisions come within the responsibility of the business line involving line managers and, as the case may be (or where required), a senior manager or a member of the management body (for example: when the client is a political exposed person). The AML/CFT compliance officer's opinion can be sought on specific cases bearing ML/TF risk(s). However, account must also be taken of the fact that in other investment firms, some French subsidiaries are not asked to provide an opinion on re-classifying existing customers into different risk categories, except for reviewing the client's KYC. That is why AMAFI suggests precisising this possible internal organisation setting in the proposed paragraph 44.

Finally, and as already mentioned above (see *AMAFI's answer to Question 2*), AMAFI proposes to precise the AML/CFT compliance officer's activity report mentioned in paragraphs 52 and 16 (c) does not supplement the already existing AML/CFT regulatory reports due to a national competent authority.

Therefore, AMAFI would like to propose the following amendments in paragraphs 44 and 52 of Guideline 4.2:

Proposed amendments

44. The AML/CFT compliance officer should exercise an advisory role before a final decision is taken by senior management on onboarding new high risk customers or re-classifying existing customers into the high risk category, unless the power to approve the establishment of such relationships is entrusted directly to the AML/CFT compliance officer. **Experience shows that in some financial sector operators, these decisions come within the responsibility of the business line involving line managers and, as the case may be, a senior manager or a member of the management body (for example: when the client is a political exposed person). The AML/CFT compliance officer's opinion can be sought on specific cases bearing ML/TF risk(s).**

[...]

52. The activity report by the AML/CFT compliance officer should be proportionate to the scale and nature of the activities of the financial sector operator (**), [...]

() It should be specified that the AML/CFT compliance officer's activity report may be in some Member States composed of different regulatory reports due to the national competent authority.**

[...]

Furthermore, AMAFI notices the EBA's will to include the staff responsible for developing software or other tools applicable to obliged entities' activities that are, event indirectly, sensitive to ML/TF risk in the persons to whom an AML/CFT training and awareness should be provided by the AMLCO, as they may be exposed to ML/TF risks (see *Guideline 4.2, par. 62, c)*). If, AMAFI understands the finality of including such staff, AMAFI wishes to suggest to the EBA to clarify the reasons for considering the extension of the scope of AML/CFT training and awareness to the staff responsible for developing software or other tools applicable to obliged entities' activities as these persons are not traditionally included in this scope (usually targeting compliance function staff, persons in contact with customers or tasked with carrying out their transactions business / front office staffs).

Section 4: Guideline 4.3 'Organisation of the AML/CFT compliance function at group level'

Question 4 Do you have any comments on Guideline 4.3?

AMAFI has no comment on the proposed Guideline 4.3.

Section 4: Guideline 4.4 'Review of the AML/CFT compliance function by competent authorities'

Question 5 Do you have any comments on Guideline 4.4?

AMAFI wishes to draw the attention of the EBA on paragraph 90 of the proposed Guideline 4.4 which provides that: *"If the competent authority considers that the individual acting as AML/CFT compliance officer is not suitable, the competent authority should notify the financial sector operator and should take any steps it considers necessary without undue delay, ranging from requiring additional training to replacement of the individual through an internal reorganization."* For clarification and harmonisation purposes, AMAFI considers it is important to precise how national competent authority can formalise such notification (form and way of notification) to any obliged entity concerned. Or at least AMAFI wishes to suggest to the ABE to propose examples of forms and ways of such notification to national competent authority. In line with the above, AMAFI's members are entitled to ask under which conditions, and at which times, the "final answer" of the obliged entity concerned should be given to the national competent authority's notification (considering the length / duration of recruitment processes and the questionings about an eventual nullity of such processes in case of opposition). Therefore, AMAFI wishes to propose to the EBA to clarify this paragraph 90 or at least illustrate this draft paragraph with concrete and useful examples.

