



February 8, 2019

Joint Committee
European Supervisory Authorities
c/o European Banking Authority
One Canada Square (Floor 46)
Canary Wharf
London E13 5AA
United Kingdom

Re: Consultation Paper on ESAs consult on guidelines on cooperation and information exchange for AML/CFT supervision purposes

(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”).)

Dear Sir/Madam:

The European Network of Credit Unions (ENCU) appreciates the opportunity to comment on the Joint Committee of the European Supervisory Authorities’ (“Joint Committee”) Consultation Paper on ESAs consult on guidelines on cooperation and information exchange for AML/CFT supervision purposes¹ (“Consultation Paper”). Credit unions are consumer-owned, not-for-profit financial cooperatives that promote financial inclusion in underserved European communities by offering their members affordable and easily understandable financial products. There are approximately 1,000 credit unions in the European Union (EU) with more than EUR 20 billion in total assets and 7 million physical person members².

Credit unions are not-for-profit, member-owned cooperatives governed by a board of members who usually serve on a voluntary basis without receiving any remuneration for time and resources dedicated to the credit union. Many credit unions have few staff and many rural credit unions are entirely run by volunteers. Credit unions often have limited financial and staff resources because of their relatively small size (average of EUR 20 million in total assets).

As such, regulatory burden is a significant issue for credit unions and this provides the basis for many of our comments herein. We fully support increased cooperation between competent authorities as being an essential part of an effective AML/CFT regime in accordance with Directive (EU 2015/849); however, we urge the Joint Committee to adopt

¹ Joint Committee of the European Supervisory Authorities’ Consultation Paper on ESAs consult on guidelines on cooperation and information exchange for AML/CFT supervision purposes (November 8, 2018) *available at* <https://eba.europa.eu/documents/10180/2440050/Consultation+Paper+on+JC+GLs+on+cooperation+and+information+exchange+for+AML+CFT+supervisory+purposes+.pdf>.

² See “Credit Unions in Europe;” http://creditunionnetwork.eu/cus_in_europe.



these AML College Guidelines in a manner that are not overly prescriptive for credit unions taking into account the limited resources to comply with extensive AML requirements.

The impacts of regulatory burdens, particularly those associated with AML/CFT impact smaller credit unions disproportionately compared to institutions with larger asset size that can spread costs over a larger asset base. We support the increased communication and collaboration among the competent authorities and urge the increased platform to be an effective tool in minimizing regulatory burdens in the process. We also note that credit unions in Europe currently only have offices in the Member States where they have their headquarters and therefore are unlikely to need supervisory colleges to regulate them for AML/CFT at this time, although this may change in the future.

Our answers to the questions are as follows:

Question 1: Do you agree with the proposal set out in Guideline 1 regarding the mapping of firms?

Answer 1: We agree with the mapping of firms and entities and believe this will be a useful tool for competent authorities. However, we urge the Joint Committee to emphasize that the process of mapping should come from sources existing within the competent authorities or from other public sources. It should not become a new reporting requirement for financial institutions or create any new regulatory burden. As indicated in the rationale, competent authorities should be able to draw on their existing maps of firms including those created in accordance with Article 48(6) of the AMLD4 as set out in the ESAs Risk Based Supervision Guidelines³.

Further, we concur with the preference for Option 3 allowing the supervisory authorities to draft their own-initiative guidelines. While this option requires more work in the short term, it appears to provide a superior platform for the colleges to function, with the advantages well stated by the guidelines.

Question 2: Do you agree with the proposed conditions and processes for establishing of an AML/CFT college, including the conversion of already existing AML/CFT sub-college structures?

Answer 2: We generally support the establishment criteria including the conversion of existing AML/CFT sub-college structures, however, we believe there should be a some flexibility by the competent authorities where the criteria for triggering the establishment of an AML/CFT college is di minimus. For example, a firm having only one branch in a third jurisdiction may not warrant the establishment of an entire college. Further, we note that with respect to the conversion process, where changes are warranted as a result of a gap analysis, there should be a procedure to notify the affected institutions so that they are aware of the identity of the lead supervisor. We support finalization of the criteria that does not require a college to be set up because a firm only operates in two member states. We

³ Joint guidelines 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 were published by the ESAs on 16 November 2016 available at https://esas-jointcommittee.europa.eu/Publications/Guidelines/Final_RBSGL_for_publication_20161115.pdf.



believe this is a reasonable approach and limits complexity where only two countries are involved.

Question 3: Do you agree with the proposed structure of colleges?

Answer 3: We generally agree with the proposed structure of the colleges, however, we are concerned surrounding the utilization of other observers that may participate in the colleges or other attendees participating in and ad hoc bases. While we are not opposed to this and understand the benefits from a supervisory perspective, the issue of maintaining confidentiality of non-public information needs to be of paramount importance in these colleges.

Substantial liability can accrue to a firm under the EU General Data Protection Regulation (EU) 2016/679 and the disclosure by a college (either intentionally or inadvertently) could result in difficulties for a firm in the event of a disclosure, even if such disclosure was made by a competent authority. The increase in the number of participants and number of countries involved inherently increases the chances of a disclosure, both from intentional causes or even more so from inadvertent causes. Different countries are covered by different confidentiality provisions, thus the potential for confusion or error is great. The involvement of numerous countries and potentially various observers or other attendees also raises the risk of political malfeasance, corruption, mistake, or other sources that may not be readily apparent to the Colleges.

We acknowledge that the guidelines set out steps that need to be taken by the lead supervisor to ensure confidentiality. We believe much more needs to be done to ensure confidentiality. Specifically, Paragraph 11.1 should be amended to read as follows:

11.1 All permanent members ~~should~~ shall keep any non-public information obtained in the AML/CFT colleges context confidential.

“Shall” more readily indicates that confidentiality is mandatory and not something that is discretionary. We believe this distinction is critical as there should be no discretion on behalf of the supervisory authority in this regard.

Question 4: Do you agree with the proposed approach for organizing the college meetings?

Answer 4: We agree with the proposed approach and agree that flexibility should be afforded to the Colleges to hold meetings based on the needs of the College. We further concur that meetings should not be held for purposes of “box ticking”. However, there should be some oversight to review decisions to meet or not meet, particularly where a meeting could reduce regulatory burden to a supervised entity or otherwise increase efficiency among the competent authorities.

Question 5: Do you agree with the proposed approach for putting in place a cooperation and information sharing agreement?

Answer 5: We generally support the establishment of a cooperation and information sharing agreement. We do recommend that the language not discourage drafting of an



appropriate agreement where individual circumstances warrant deviation from the template. The template instead can serve as a base, but it should not take substantial time for a lead supervisor to draft an agreement customized to the particular College's needs.

With respect to the template, our earlier comments concerning confidentiality likewise apply to this section. We believe the obligations concerning confidentiality should be clearly spelled out. Most notably, there should be a breach notification obligation contained in the Treatment of Confidential Information section such that if there is a breach of confidential information, any firm affected should be notified as soon as reasonably practicable so that they can take appropriate remedial measures. The other supervisory authorities should likewise be notified.

Question 6: Do you Agree with the proposed scope and the process for requesting mutual assistance?

Answer 6: We generally agree with the proposed scope and process for requesting mutual assistance. We note that in conducting joint examinations when necessary, the authorities should be encouraged to reduce duplication of efforts as much as possible so as to reduce the regulatory burden on a particular firm. Joint exams should not inherently require more persons than otherwise necessary to conduct a particular examination.

Question 7: Do you agree with the proposed approach regarding the uses of non-public information?

Answer 8: We reiterate our previous concerns concerning the use of confidential information, in particular Answer 3 wherein we recommend changes to Guideline 11.

Question 8: Do you agree with the proposal that a common approach and coordinated actions can be agreed by competent authorities?

Answer 8: Yes, we agree that coordinated actions can be agreed by competent authorities and agree that supervision can prove to be more effective where supervisors coordinate their efforts. We encourage supervisors to conduct such activities. We also note that when preparing for such coordination, often times prior consultation with the firm, when practicable, can assist in this coordination, and we would encourage such coordination.

Question 9: Do you consider that these guidelines have sufficiently addressed different ways to cooperation and information exchange between AML/CFT and prudential supervisors?

Answer 9: The provisions appear to be reasonable.

Question 10: Do you agree with the proposed transitional period and review provisions?

Answer 10: The transitional period and review provisions appear to be reasonable.



In conclusion, we support the implementation of the guidelines and believe overall they will improve the cooperation and information exchange between AML/CFT competent authorities and prudential supervisors. Our hope is that the improved communication ultimately will result in reduced regulatory burden for credit unions due to the improved efficiencies. We concur with the mapping exercise for the purposes of determining which firms will require AML/CFT colleges, however, it should only be undertaken in a manner that does not increase the regulatory burden of firms.

ENCUC appreciates the opportunity to comment on the Joint Committee's Consultation Paper. Please do not hesitate to contact me at aprice@woccu.org or phone at +1 202-843-0704 or Jim Rusagara by email at info@creditunionnetwork.eu or phone at +32 2 626 9500 or +32 488 809 437 (mobile) should you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Price'.

Andrew T. Price
Regulatory Counsel
European Network of Credit Unions