

Subject: EMA draft response to [EBA consultation](#) on amending Guidelines on Risk-Based Supervision (EBA/GL/2021/16)

Date: 28.06.2023

Background

On 29 March 2023, the EBA launched a public consultation (“**CP**”) on amendments to its Guidelines (“**GL**”) on risk-based AML/CFT supervision, with the proposed changes extending the scope of the Guidelines to AML/CFT supervisors of crypto-asset service providers (“**CASPs**”). The consultation deadline is **29 June 2023**.

EMA response

Question 3

Do you have any comments on the proposed changes to the Guideline 4.2 ‘Step 1 – Identification of risk and mitigating factors’?

Response:

Guideline 31 subparagraph (k) and guideline 45 subparagraph (v): The EMA suggests adding clarifications as to how competent authorities’ access to analytics tools/platforms data is to be established and maintained. The current wording does not provide sufficient information on whether, for example, CASPs will be expected to pass on information about analyses that are carried out in relation to them or their customers, or whether (as is currently more common practice) competent authorities would be expected to contract with blockchain analytics firms to obtain analyses directly.

Question 5

Do you have any comments on the proposed changes to the Guideline 4.4 ‘Step 3 – Supervision’?

Response:

In guideline 126 subparagraph (c), an additional point should be added to clarify that competent authorities should also co-operate with relevant industry associations when issuing sectoral guidance. This is to ensure that guidance reflects industry views, which is particularly important in a rapidly developing technological environment. We suggest the following wording:

'c) where multiple competent authorities are responsible for the AML/CFT supervision of subjects of assessment in the same sector in the Member State, these competent authorities should co-ordinate their actions **including with relevant industry associations** and consider issuing joint guidance to set consistent expectations. Competent authorities should consider whether other authorities may be responsible for issuing guidance on related matters and if so, coordinate with those authorities as appropriate.'

In guideline 134 subparagraph (c) should be amended to state:

'including any software or other technological tools **used to comply with their AML/CFT obligations**.' This is to avoid an unintended wider interpretation of the guideline that would allow competent authorities to also access firms' general software apart from that used for compliance with AML/CFT obligations.