



Council of the
European Union

Brussels, 17 December 2018
(OR. en)

Interinstitutional File:
2017/0230(COD)

15569/18
ADD 1

LIMITE

EF 333
ECOFIN 1214
DROIPEN 212
CRIMORG 167
CODEC 2347

NOTE

From: Presidency
To: Delegations

Subject: Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

- Presidency compromise proposal

Changes compared to the text of the Commission proposal are marked in **bold** or by (...) for deleted text.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) No 1093/2010 establishing a European Supervisory
Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a
European Supervisory Authority (European Insurance and Occupational Pensions
Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory
Authority (European Securities and Markets Authority); (...) and (EU) Directive 2015/849 on
the prevention of the use of the financial system for the purposes of money-laundering or
terrorist financing**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

(...)

¹ OJ C , , p. .

² OJ C , , p. .

³ Position of the European Parliament of ... (OJ ...) and decision of the Council of ...

- (11a) It is becoming increasingly important to promote consistent, systematic and effective monitoring and assessment of risks in relation to money-laundering and terrorist financing in the Union's financial system. Given the consequences for financial stability which may stem from abuses of the financial sector for money-laundering or terrorist financing purposes, and building on the experience already gained by EBA in protecting the banking sector from such abuses, EBA should take a leading role at Union level to protect the financial system from money-laundering and terrorist financing risks. Therefore, it is necessary to entrust EBA, in addition to its present competences, with the authority to act within the remit of Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 insofar as such authority relates to the prevention of money-laundering and terrorist financing, where it concerns financial sector operators and the competent authorities supervising them, which are covered by those Regulations. Moreover, concentrating this mandate for the entire financial sector within EBA would optimise the use of its expertise and resources, and is without prejudice to the material obligations laid down in Directive (EU) 2015/849.
- (11b) In order for EBA to exercise its mandate effectively it should make full use of all its powers and tools under the Regulation. **For that purpose it shall develop common regulatory and supervisory standards, in particular by developing draft regulatory technical standards in accordance with Article 10, draft implementing technical standards in accordance with Article 15, guidelines and recommendations in accordance with Article 16 and providing opinions for preventing money laundering and terrorist financing in the financial sector and promoting their consistent implementation.**
- (11c) In line with its new role, it is important that EBA collects all relevant information on material weaknesses in relation to money-laundering and terrorist financing activities identified by the relevant Union and national authorities, without prejudice to the tasks assigned to authorities under Directive (EU) 2015/849. **EBA is not collecting information on concrete suspicious transactions, about which financial sector operators are obliged to file suspicious transaction reports with Financial Intelligence Units in their Member States according to Directive (EU) 2015/849. Weaknesses should be considered material where they constitute a breach or a potential breach or inappropriate or ineffective application legal provisions related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, or inappropriate or ineffective application of internal policies and procedures aiming at ensuring compliance with these legal provisions. A breach is constituted by the failure of a financial sector operator to comply with the requirements of the Union acts and of national laws transposing them referred to in Article 1(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively to the extent that those acts contribute to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. There is a potential breach where the competent authority has reasonable grounds to suspect that a breach has occurred, but at this stage is not in the position to finally conclude that it has occurred. However, due to the information obtained at this stage such as information from on-site inspections or off-site proceedings, it is very likely that a breach has occurred. Inappropriate or ineffective application of legal provisions is constituted by the failure of a financial sector operator to implement the requirements of the above mentioned acts in a satisfactory manner. Inappropriate or ineffective application of internal policies and procedures aiming at ensuring compliance with**

those acts should be considered as constituting a weakness substantially raising the risk that breaches have occurred or can occur. (...)

The Authority should store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information. The Authority is therefore mandated to develop draft regulatory technical standards for the information collection exercise.

(11d) (...) **The Authority should carry out reviews of competent authorities, as well as (...) risk assessments on the appropriateness of the strategies and resources of competent authorities with a view to the most important emerging money laundering and terrorist financing risks as identified in the Supranational Risk Assessment. The Authority, when conducting such peer reviews in accordance with Article 30, shall take into account relevant evaluations, assessments or reports drawn up by international organisations and intergovernmental bodies with competence in the field of preventing money laundering or terrorist financing as well as the biannual Report of the Commission under Article 6 of Directive (EU) 2015/849 and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849.** Furthermore, EBA should also have a role cooperating and liaising with relevant third country authorities on these matters with a view to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing having a cross-border and third country dimension.

(11e) In order to enhance the effectiveness of supervisory control of compliance in the area of money laundering and terrorist financing and to ensure greater coordination of the enforcement by national competent authorities of breaches of directly applicable Union law or its national transposing measures, EBA should have the power, where there are indications of material breaches, to request competent authorities to investigate any possible breaches of the relevant rules, to consider taking decisions and imposing sanctions addressed to financial institutions requiring them to comply with their legal obligations. This power should only be used where EBA has indications of material breaches.

(...)

(15a) (...)

(15b) For carrying out its tasks and exercising its powers, EBA should be able to take individual decisions addressed to financial sector operators in the context of the procedure for breach of Union law and of the procedure of binding mediation even when the material rules are not directly applicable to financial sector operators, after having taken a decision addressed to the competent authority. Similarly to what is provided for in previous financial services legislation⁴ (...) where the material rules are laid down in Directives, EBA should apply (...) national legislation (...) to the extent that it transposes those Directives. Where the relevant Union law is composed of Regulations and where, on the date of entry into force of this Regulation, those Regulations expressly grant options to Member States, EBA should apply the national legislation (...) those options.

(15c) Where this Regulation authorises EBA to apply national laws transposing Directives, they can be applied by EBA only to the extent necessary for carrying out the tasks conferred on it by Union law. Therefore, EBA should apply all the relevant material

⁴ Council Regulation (EU) No 1024/2013

Union rules, and where these are laid down in Directives, the Authority should apply the national legislation transposing those Directives up to the extent required by Union law, aiming at an even application of law throughout the Union while respecting the respective national law.

(15d) Where a decision of EBA is based on or connected with the powers conferred upon it in Articles 9b, 17 or 19 and concerns financial institutions or competent authorities within the remit of EIOPA or ESMA, EBA should only be able to take the decision with the prior consent of EIOPA or ESMA, respectively. EIOPA and ESMA, in each case taking into account the urgency of the relevant decision at hand, should consider to make use of expedited decision procedures in line with their respective internal governance when deciding on their consent.

(...)

(24a) To ensure that the appropriate level of expertise underpins decisions relating to anti-money laundering and terrorist financing measures, it is necessary to set up a committee composed of (...) high-level representatives with expertise and decision-making powers in the area of the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing of authorities and bodies in charge of compliance with anti-money laundering and terrorist financing legislation, which will examine and prepare decisions to be taken by EBA. In order to avoid duplication, this new committee will replace the existing anti-money laundering sub-committee which has been set up within the ESAs Joint Committee. EBA, EIOPA and ESMA should be able at any time to submit written observations on any draft decision of the committee, which the Board of Supervisors of EBA should duly consider before taking its final decision.

(24b) In line with the objective to achieve a coherent, effective and practical supervisory system in the Union to prevent and combat money-laundering and terrorist financing, the Commission should, in consultation of all relevant authorities and stakeholders, conduct a comprehensive assessment on the implementation, functioning and effectiveness as well as the legal practicality of the specific tasks conferred to the Authority related to preventing the use of the financial system for the purposes of money-laundering or terrorist financing. In particular, the assessment should – to the extent possible – reflect experiences where the Authority requests a competent authority to investigate possible breaches of national laws to the extent that they transpose Directives or exercise options to Member States by Union law by financial sector operators, or to consider imposing sanctions on that operator in respect of such breaches, or to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligations under national laws to the extent that they transpose Directives or exercise options granted to Member States by Union law, or where the Authority applies national legislation to the extent it transposes Directives or exercises options granted to Member States by Union law. The Commission should submit this assessment as part of its report pursuant to Article 65 of Directive (EU) 2018/843, and together with legislative proposals, if appropriate, to the European Parliament and the Council by 11 January 2022. Until the submission of this assessment, the powers granted to the Authority related to preventing the use of the financial system for the purposes of money-laundering or terrorist financing in Articles 9b, 17(6) and 19(4) should be considered a provisional solution to the extent that they allow the Authority to base

requests to competent authorities on possible breaches of national laws or allow the application of national legislation by the Authority.

(...)

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 1093/2010

Regulation (EU) 1093/2010 is amended as follows:

(1) Article 1 is amended as follows:

(...)

(a) in Article 1(2), the following subparagraph is added:

'The Authority shall also act within the powers conferred by this Regulation and within the scope of Directive (EU) 2015/849(*) **and of Regulation (EU) 2015/847 (**)** of the European Parliament and of the Council to the extent that that Directive applies to financial sector operators and the competent authorities that supervise them. For this purpose only, EBA shall carry out the tasks conferred by any legally binding Union act on the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 or to the European Securities and Markets Authority established by Regulation (EU) No 1095/2010. When carrying out such tasks, the Authority shall keep those Authorities informed of its activities concerning any entity which is a "financial institution" as defined in Article 4(1) of Regulation (EU) No 1094/2010 or a "financial market participant" as defined in Article 4(1) of Regulation (EU) No 1095/2010.';

(*) Directive (EU) 2015/849 of the European Parliament and 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 (OJ L 141, 5.6.2015, p. 73)';

(**) **Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1)'**

(2) (...)

(3) Article 4 is amended as follows:

(a) (...)

(aa) the following point (1a) is inserted:

“(1a) 'financial sector operators' means any entity which is subject to Directive (EU) 2015/849 **within the meaning of respectively Article 3(1) and (2) of Directive (EU) 2015/849** and which is either a 'financial institution' as defined in Article 4(1)

of this Regulation and in Article 4(1) of Regulation (EU) No 1094/2010 or a 'financial market participant' as defined in Article 4(1) of Regulation (EU) No 1095/2010";

(b) (...)

(c) point (ii) of point (2) is replaced by the following:

"(ii) with regard to Directives 2002/65/EC ~~and (EU) 2015/849~~ the authorities and bodies competent for ensuring compliance with the requirements of ~~those~~ **that** Directives by ~~credit and~~ financial institutions;

(iia) with regard to Directive (EU) 2015/849 the authorities and bodies that supervise **credit institutions and** financial institutions **within the meaning of respectively Article 3(1) and (2) of Directive (EU) 2015/849** and are competent for ensuring their compliance with the requirements of that Directive";

(d) (...)

(e) (...)

(4) (...)

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) (...)

(ii) (...)

(iii) (...)

(iv) (...)

(v) the following point (l) is added:

"(l) to contribute to the prevention of the use of the financial system for the purposes of money-laundering and terrorist financing.";

(b) (...)

(c) (...)

(5) (...)

(6a) the following Articles 9a and 9b are inserted:

"Article 9a

Special tasks related to preventing (...) money-laundering and terrorist financing

1. The Authority shall take a leading role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent (...) **the use of the**

financial system for the purposes of money laundering and terrorist financing, including by:

- (a) collecting information from competent authorities relating to weaknesses **that have been** identified in the processes and procedures, governance arrangements, fitness and properness (...), **acquisition of qualifying holdings, authorisation procedures,** business models and activities of financial sector operators to prevent money-laundering and terrorist financing as well as measures taken by competent authorities **in response to those material weaknesses:**

(i) a breach or a potential breach of, or

(ii) inappropriate or ineffective application of, or

(iii) inappropriate or ineffective application of internal policies and procedures to comply with

one or more requirements of the Union acts and of national laws transposing them referred to in Article 1(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively with regard to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing on the part of a financial sector operator.

Competent authorities shall provide all such information to the Authority in addition to any obligations under Article 35 **and shall keep the Authority informed in due time about any subsequent developments relating to the information provided.** The Authority shall coordinate closely with Financial Intelligence Units, **while respecting the status and obligations of the Financial Intelligence Units under Directive (EU) 2015/849;**

i. By [insert date], the Authority shall develop draft regulatory technical standards on the definition of weaknesses, their materiality and the practical implementation of the information collection by the Authority as well as the type of information that should be provided pursuant to paragraph 1(a). In developing those technical standards, the Authority shall consider the volume of the information to be provided and the need to avoid duplication. It shall also set out arrangements to ensure effectiveness and confidentiality.

ii. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1a of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

iii. Competent authorities may share, in accordance with national law, any additional information that they deem relevant to the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing with the central database referred to in paragraph 2.

- (b) (...)

- (c) monitoring **single** market developments and assessing vulnerabilities to money-laundering and terrorist financing in the financial sector.

2. **The Authority shall establish and keep up to date a central database of information collected pursuant to point (a) in paragraph 1. (...) Competent authorities may address reasoned requests to the Authority for information about financial sector operators relevant for their supervisory activities with regard to the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The Authority shall assess these requests and provide the information requested by competent authorities on a need-to-know basis in a timely manner. Where the Authority does not provide the requested information, it shall inform the requesting competent authority and give an explanation of why the information is not provided. The Authority shall share with the competent authority or any other authority or institution that has initially provided the requested information the identity of the requesting competent authority, the identity of the financial sector operator concerned, the reason for the information request as well as whether the information has been shared or not. In addition, the Authority shall analyse the information in order to share relevant information on its own initiative with competent authorities for their supervisory activities with regard to the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Where it does so, it shall notify the competent authority that initially provided the information. It shall also conduct analysis on an aggregate basis for the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849.**
- (a) By [insert date], the Authority shall develop draft regulatory technical standards specifying how information is analysed and made available to competent authorities on a need-to-know and confidential basis.**
- (b) Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 2a of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.**
3. **The Authority shall promote convergence of supervisory processes referred to in Directive (EU) 2015/849, including by conducting (...) peer reviews, in accordance with Article 30. The Authority, when conducting such peer reviews in accordance with Article 30, shall take into account relevant evaluations, assessments or reports drawn up by international organisations and intergovernmental and bodies with competence in the field of preventing money laundering or terrorist financing as well as the biannual Report of the Commission under Article 6 of Directive (EU) 2015/849 and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849.**
- (...)**
4. **The Authority, with the participation of the competent authorities, shall (...) perform risk assessments on competent authorities (...) to (...) assess their strategies and resources to address (...) the most important emerging risks related to money-laundering and terrorist financing at Union level as identified in the Supranational Risk Assessment. (...) It shall perform these risk assessments in particular for the purpose of issuing the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849. The Authority shall perform risk assessments on the basis of the information available to it, including peer reviews in accordance with Article 30, the analysis that it has conducted on an aggregate basis of the information collected by the central database pursuant to paragraph 2 as well as relevant evaluations,**

assessments or reports drawn up by international organisations and intergovernmental bodies with competence in the field of preventing money laundering and terrorist financing and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849. The Authority shall make the risk assessments available to all competent authorities.

For the purpose of subparagraph 1, the Authority, through the internal committee established under paragraph 6, shall develop and apply methods to allow for an objective assessment as well as a high quality and consistent review of the assessments and the application of the methodology and to ensure a level playing field. The internal committee established under paragraph 6 shall carry out the quality and consistency review of the risk assessments. It shall prepare the draft risk assessments for adoption by the Board of Supervisors in accordance with Article 44.

5. In (...) cases (...) where there are clear indications from reliable sources of breaches on the part of financial sector operators of the requirements laid down in Directive (EU) 2015/849 that appear to be serious, repeated, systematic or a combination thereof and where these cases have a cross border dimension with third countries, the Authority shall (...) **facilitate** cooperation between competent authorities in the Union and the relevant authorities in third countries **where necessary**.
6. The Authority shall establish a permanent internal committee on anti-money laundering and countering terrorist financing to coordinate measures in order to **prevent the use of the financial system for the purposes of money-laundering or terrorist financing (...)** and to prepare, **in the context of Directive 2015/849/EU and Regulation 2015/847/EU,** all draft decisions to be taken by the Authority in accordance with Article 44.
7. The committee (...) shall be composed of (...) **high-level representatives with expertise and decision-making powers in the area of the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing of the authorities and bodies of all Member States** competent for ensuring compliance with the requirements of Directive (EU) 2015/849 and Regulation 2015/847/EU by financial (...) **sector operators as well as a high-level representative of the Authority, the European Insurance and Occupational Pensions Authority and of the European Securities and Markets Authority respectively.** The high-level representatives of the Authority, the European Insurance and Occupational Pensions Authority and of the European Securities and Markets Authority shall participate in the meetings of the committee without the right to vote. In addition, the Commission, the ESRB, and the Supervisory Board of the European Central Bank, shall each nominate a high-level representative to participate in the committee meetings as observers. The chair of the committee shall be elected by and from the voting members of the committee. Each competent authority and Union body shall be responsible for nominating an alternate from its authority, who may replace the member where that person is prevented from attending. Member States where more than one authority is competent for ensuring compliance with the requirements of Directive (EU) 2015/849 for financial sector operators may nominate one representative for each competent authority. Irrespective of the number of competent authorities represented in the meeting, each Member State shall have one vote.";
8. The Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority may at any time submit written observations on any draft decision of the committee, which the Board of Supervisors

shall duly consider before taking its final decision. Where a decision is based on or connected with the powers conferred upon the Authority under Articles 9b, 17 or 19 and concerns

- (i) financial institutions as defined in Article 4(1) of Regulation (EU) No 1094/2010 or any of the competent authorities supervising them, or**
- (ii) financial market participants as defined in Article 4(1) of Regulation (EU) No 1095/2010 or any of the competent authorities supervising them,**

the Authority may only take the decision with the prior consent of the European Insurance and Occupational Pensions Authority (in case of (i) above) or of the European Securities and Markets Authority (in case of (ii) above). EIOPA or ESMA shall take the decision in accordance with Article 44 of Regulation (EU) 1094/2010 or Article 44 of Regulation (EU) 1095/2010 respectively.

Article 9b

Request for investigation related to the prevention of money laundering and terrorist financing

1. In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in accordance with Directive (EU) 2015/849, the Authority may, where it has indications of material breaches, request a competent authority as referred to in point (iia) of Article 4(2) to investigate possible breaches of Union law, and where such Union law is composed of Directives or explicitly grants options for Member States, breaches of national laws **to the extent that they transpose (...)** Directives or **exercise (...)** options granted to Member States by Union law, by a financial sector operator and to consider imposing sanctions on that operator in respect of such breaches. Where necessary, it may also request a competent authority as referred to in point (iia) of Article 4(2) to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligations under directly applicable Union law, or under national laws **to that extent that they transpose (...)** Directives or exercise (...) options granted to Member States by Union law, including the cessation of any conduct.
 2. The competent authority shall comply with any request **to investigate, to consider sanctions in respect of breach or to consider adopting an individual decision addressed to a financial sector operator addressed to** it in accordance with paragraph 1. **It (...)** shall inform the Authority within **15 working (...)** days of the steps it has taken or intends to take to comply with that request.
 3. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not **inform the Authority within 15 working days of the steps it has taken or intends to take** to comply with paragraph 2 of this Article, Article 17 shall apply.";
- (...)

(8) Article 17 is amended as follows:

(...)

paragraphs 6 and 7 are replaced by the following:

“6. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non-compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial institutions or, in the context of matters relating to the prevention (...) of money laundering and terrorist financing, to financial sector operators, adopt an individual decision addressed to a financial institution or a financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any conduct.

In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, where the relevant requirements of the acts referred to in Article 1(2) are not directly applicable to financial sector operators, the Authority may adopt a decision requiring the competent authority to comply with the formal opinion referred to in paragraph 4 within the period of time specified therein. If the authority does not comply with that decision, the Authority may also adopt a decision in accordance with the first sub-paragraph. To that effect, the Authority shall apply all relevant Union law, and where that Union law is composed of Directives the national legislation **to the extent that it transposes** those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation **to the extent that it exercises** those options.

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4 of this Article.

7. Decisions adopted in accordance with paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 of this Article or to a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.”;

(9) Article 19 is amended as follows:

(...)

paragraph 4 is replaced by the following:

“4. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution or, in the context of matters relating to the prevention (...) of money laundering and terrorist financing, a financial sector operator

complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to that financial institution or financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice.

In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, the Authority may also adopt a decision in accordance with the first subparagraph where the relevant requirements of the acts referred to in Article 1(2) are not directly applicable to financial sector operators. To that effect, the Authority shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation exercising those options.”;

(...)

(10) Article 54 is amended as follows:

(...)

(a) in paragraph 2 the fifth indent is deleted;

(b) **(...)**

(...)

(11) a new Article 81a is inserted:

“Article 81a

Assessment of the specific tasks conferred to the Authority related to preventing the use of the financial system for the purposes of money-laundering or terrorist financing

1. The Commission shall, in consultation of all relevant authorities and stakeholders, conduct a comprehensive assessment on the implementation, functioning and effectiveness as well as the legal practicality of the specific tasks conferred to the Authority related to preventing the use of the financial system for the purposes of money-laundering or terrorist financing pursuant to Articles 1(2), 4(1), 8(1), 9a, 9b, 17, 19 of this Regulation.

2. The assessment shall – to the extent possible – reflect experiences reported by the Authority regarding cases of the Authority

(a) requesting a competent authority to investigate possible breaches of Union law, and where such Union law is composed of Directives or explicitly grants options for Member States, breaches of national laws to

the extent that they transpose Directives or exercise options to Member States by Union law, by a financial sector operator or to consider imposing sanctions on that operator in respect of such breaches in accordance with the first sentence of Article 9b(1);

- (b) requesting a competent authority as referred to in point (ia) of Article 4(2) to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligations under directly applicable Union law, or under national laws to the extent that they transpose Directives or exercise options granted to Member States by Union law, including the cessation of any conduct in accordance with the second sentence of Article 9b(1);**
- (c) adopting an individual decision addressed to a financial sector operator in accordance with Article 17(6) or Article 19(4).**

3. The assessment shall comprise the cooperation between the Authority and the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority related to preventing the use of the financial system for the purposes of money laundering or terrorist financing and, if applicable, provide proposals for improvement.”

4. The Commission shall submit the assessment referred to in paragraph 1 as part of its report pursuant to Article 65 of Directive (EU) 2018/843, and together with legislative proposals, if appropriate, to the European Parliament and the Council by 11 January 2022.”

Article 2

Amendments to Regulation (EU) No 1094/2010

Regulation (EU) 1094/2010 is amended as follows:

- (1) paragraph 2 of Article 1 is replaced by the following:

(...)

When carrying out the powers conferred by this Regulation, the Authority shall consistently take into account money laundering and terrorist financing concerns. The Authority shall contribute within its competences to the work of the European Banking Authority established by Regulation (EU) No 1093/2010 related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with Directive (EU) 2015/849. The Authority shall decide on giving its prior consent in accordance with Article 9a(8)(i) of Regulation (EU) No 1093/2010. When fulfilling these obligations, the Authority shall act within the scope of Directive (EU) 2015/849.

(...)

(12) Article 54 is amended as follows:

(...)

(a) in paragraph 2 the fifth indent is deleted;

(...)

Article 3

Amendments to Regulation (EU) No 1095/2010

Regulation (EU) 1095/2010 is amended as follows:

Article 1 is amended as follows:

paragraph 2 is replaced by the following:

(...)

When carrying out the powers conferred by this Regulation, the Authority shall consistently take into account money laundering and terrorist financing concerns. The Authority shall contribute within its competences to the work of the European Banking Authority established by Regulation (EU) No 1093/2010 related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, in accordance with Directive (EU) 2015/849. The Authority shall decide on giving its prior consent in accordance with Article 9a(8)(ii) of Regulation (EU) No 1093. When fulfilling these obligations, the Authority shall act within the scope of Directive (EU) 2015/849.

(...)

Article 54 is amended as follows:

(...)

(b) in paragraph 2 the fifth indent is deleted;

(...)

Article 4- 9

(...)

Article 9bis Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

(13) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. The Commission shall make the report referred to in paragraph 1 available to Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money-laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Banking Authority ('EBA'), and representatives from Financial Intelligence Units, to better understand the risks. Reports shall be made public at the latest six months after having been made available to Member States, except for the elements of the reports which contain classified information.";

(b) in paragraph 5 the second sentence is replaced by the following:

"Thereafter, EBA shall issue an opinion every two years.";

(14) Article 7 is amended as follows:

(a) in paragraph 2 the second sentence is replaced by the following:

"The identity of that authority or the description of the mechanism shall be notified to the Commission, EBA, and other Member States.";

(b) paragraph 5 the first sentence is replaced by the following:

"5. Member States shall make the results of their risk assessments, including their updates, available to the Commission, EBA and the other Member States.";

(15) in Article 17 the first sentence is replaced by the following:

"By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate.";

(16) in paragraph 4 of Article 18, the first sentence is replaced by the following:

“4. By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate.”;

(17) in Article 41, paragraph 1 is replaced by the following:

“1. The processing of personal data under this Directive is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Directive by the Commission or by EBA is subject to Regulation (EC) No 45/2001.”;

(18) Article 45 is amended as follows:

(a) paragraph 4 is replaced by the following:

“4. The Member States and EBA shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and EBA shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.”;

(b) paragraph 6 is replaced by the following:

“6. EBA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.”;

(c) paragraph 10 is replaced by the following:

“10. EBA shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017.”

(19) Article 48 is amended as follows:

(a) in the second subparagraph of paragraph 1a the final sentence is replaced by the following:

“Financial supervisory authorities of the Member States shall also serve as a contact point for EBA.”;

(b) in paragraph 10 the first sentence is replaced by the following:

“By 26 June 2017, the ESAs and thereafter EBA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, on the characteristics of a risk - based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis.”;

(20) in Section 3 the title of Subsection II is replaced by the following:

“Cooperation with EBA”;

(21) Article 50 is replaced by the following:

“The competent authorities shall provide EBA with all the information necessary to allow it to carry out its duties under this Directive.”;

(22) Article 62 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Member States shall ensure that their competent authorities inform EBA of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.”;

(b) paragraph 3 is replaced by the following:

“3. EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.”.

Article 10

(...)

Article 11

Entry into force and entry into application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

(...)

Articles 1, 2 and 3 shall apply as from [PO: please insert date 3 months after the date of entry into force].

(...)

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
